

THE FEUDAL REGIME

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THE FEUDAL RÉGIME

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NOTE TO FIRST IMPRESSION

THIS account of the feudal régime forms the first chapter in the second volume of the *Histoire Générale du IV^e Siècle à nos Jours*, edited by MM. Lavissee and Rambaud. It is now done into English, with the idea that as a short description of the social organization prevailing in Europe from the tenth to the thirteenth century it may approve itself as widely among us as it has in France. It is hoped not only that it may be useful as collateral reading for classes in history, for which it seems peculiarly fitted, but also that it may be of interest to general readers. If it meets with sufficient favor, it is purposed to issue similar monographs on other subjects.

Now and then, a note of no special importance has been dropped; a passage has been rendered rather freely; or an explanation, enclosed in brackets, has been added by the editor. Often, also, the paragraphing has been modified, out of respect for English usage. Otherwise, however, the original is unchanged in the translation.

The editor is deeply indebted to Mr. Christian Gauss, of Lehigh University, for extensive aid in the translating, and also to his colleague, Mr. Victor François. He relieves them, though, of all responsibility for errors.

Idaho College of Idaho

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THE FEUDAL RÉGIME

THE FEUDAL RÉGIME

FROM ITS BEGINNINGS TO THE END OF THE THIRTEENTH CENTURY

THE countries that made up the empire of Charlemagne underwent during the tenth century a profound transformation, the details of which, from lack of documents, are unknown to us. When it begins to grow light again, toward the end of the eleventh century, society and government both appear transformed. To the new organization historians have given the name *feudal régime*. Coming into existence in the obscure period that followed the dissolution of the Carolingian empire, this régime developed slowly, without the intervention of a government, without the aid of a written law, without any general understanding among individuals; rather only by a gradual transformation of customs, which took place sooner or later, but in about the same way, in France, Italy, Christian Spain, and Germany. Then, toward the end of the eleventh century, it was transplanted into England and into southern Italy, in the twelfth and thirteenth into the Latin states of the East, and beginning with the fourteenth into the Scandinavian countries.

This régime, established thus not according to a general plan but by a sort of natural growth, never had forms and usages that were everywhere the same. It is impossible to gather it up into a perfectly exact picture, or indeed to make any general statement about it which

would not be in contradiction to several particular cases. And so no scholar has risked publishing a study of the feudal régime in its entirety. All that can be attempted for the present is to bring together the most common characteristics of the society and the usages in feudal countries, from the tenth to the thirteenth century.

Three usages, common to all of Charlemagne's empire, dominated and moulded society: the owning of large domains; the obligation of lay owners to equip themselves and wage war at their own expense; and the position of the clergy as owners. Society had come to be divided into two classes: the mass of peasants established on the great domains; and the aristocracy, possessors of the soil, made up of two categories: warriors and churchmen.¹

¹ The inhabitants of the towns (bourgeois) formed, from the end of the eleventh century, a distinct class, intermediate between the peasants and the nobles. But the towns came after the establishment of the feudal régime and even aided in destroying it. It is possible, then, to except them.

I

THE PEASANTS

The Great Domains.—Beginning with the ninth century there remained in the Carolingian empire scarcely any small owners cultivating their land themselves, save perhaps in the outskirts of the cities of the south and in some remote regions of the mountains or of the coasts. Almost all the land belonged to large owners who did not work with their hands. As it had little value, it was divided into domains of larger area than what we to-day call a great estate, comparable only to the domains of Russian lords before the abolition of serfdom or to plantations in the United States in the time of the negro slaves. A domain extended over the territory of a village of the present day. Most of the communes of France are but ancient domains, and many of them have kept the old name; like Clichy, Palaiseau, Issy, Ivry.

The land in each domain was divided into two parts, of unequal extent. The smaller, ordinarily the land near the master's house, formed the reserve which the owner kept to exploit directly for his own profit; this was the master's land (*indominicata*). What it produced belonged to the owner. There stood the master's house, where the owner lived, or at least his intendant. The rest of the land was distributed among a certain number of peasant families established on the domain. Most

frequently they lived in cottages grouped around the master's house, thus forming a village. Each family, from father to son, cultivated the same allotment of land, which ordinarily was made up of several small parcels scattered over the whole extent of the domain. The peasants kept the products of the field; but, in exchange, they owed dues and services to the owner and lived in dependence upon him. These dues and services varied infinitely, in accordance with agreements made at the outset or with the custom of the country; no law regulated the charges which the landlord could impose upon his peasants or the amount of land that he should give them. But the conditions of life, which were very uniform, had produced almost everywhere very analogous régimes.

This organization appears already in the register of the abbey of Saint-Germain des Prés, drawn up at the end of the reign of Charlemagne. Each domain has a chapter, in which are enumerated, first, the reserve of the master, with the harvest; then the peasants, their families, the extent of their holdings, their dues and their corvées. Here, for example, is the domain of Palaiseau: "At Palaiseau there is a master's reserve, with a house and other necessary buildings. There are six fields of arable land, comprising two hundred and eighty-seven *bonniers*,¹ enough in which to sow thirteen hundred *muids*² of grain; one hundred and twenty-seven arpents³

[¹ A *bonnier*, Latin *bonuarium*, was possibly a little above three acres. See Longnon, *Polyptique de l'Abbaye de Saint-Germain des Prés*, Introduction, pp. 20-21.]

[² M. Seignobos says *boisseaux* for *muids*. The *muid*, Latin *modius*, as used here, was possibly a little less than six pecks. See Langnon, as before, p. 26.]

[³ The arpent, as understood on the domains of Saint-Germain des Prés, was probably equivalent to a little less than a third of one of our acres. See Longnon, as before, p. 19.]

of vineyard, good for eight hundred measures¹ of wine; and a hundred arpents of meadow, from which a hundred and fifty loads² of hay can be taken. In woodland, all together, there is as much as would make two leagues across, sufficient to fatten fifty hogs.³ There are three mills, which bring in one hundred and fifty-four *muids*. There is a church, with all its furnishings. . . .

“Wilfridus, a colonus, and his wife, a colona, tenants of Saint-Germain, have with them two children, named . . . He occupies two free holdings. For each holding he pays one ox, does the fall work on four perches,⁴ does corvées, carting, and odd jobs when he is ordered; also he pays three pullets and fifteen eggs. Hairmundus, a colonus, and his wife, a colona, tenants of Saint-Germain, have with them five children. . . . He occupies one free holding containing ten *bonniers* in arable land, two arpents in vineyard, one arpent and a half in meadow. He pays the same.” A hundred and ten like articles follow, concerning coloni who each occupied one holding. “Maurus, serf, and his wife, free, tenants of Saint-Germain, have with them two children. . . . Guntoldus, colonus of Saint-Germain. These people occupy one servile holding, containing two *bonniers* in arable land, two arpents and a half in vineyard, one arpent and a half in meadow. They cultivate

[¹ The original has *modios*, or *muids*, the same measure as that just used in reference to grain.]

[² The load referred to was probably less than half a ton. See Longnon, as before, p. 29.]

[³ The meat most common at this time was pork; the forest (of oaks) was considered especially as hog pasture. This was still the condition in Croatia and Servia in the eighteenth century.]

[⁴ It is thought that at that time people reckoned fifty perches to the *bonnier*; which would make about seventeen perches in an acre, instead of one hundred and sixty as in our reckoning.]

eight acres of vineyard, pay four measures of wine, two *setiers*¹ of mustard, three pullets, fifteen eggs, and do odd jobs, corvées, and carting. . . ." The chapter on Palaiseau ends thus: "This makes in all one hundred and seventeen holdings, free and servile."

Outside of the reserve, from which the landlord drew profit directly by means of the corvées, the domain was cut up into tenures (that is, the holdings), divided here into two classes: the larger ones, the free holdings, to judge by their name, were occupied at first by free tenants; the smaller, the servile holdings, by slaves of the landlord. But this division did not last, for in the very register which makes it known to us we see that it had ceased to be observed; we find serfs on free holdings and free tenants on servile holdings.

An inventory of the estates of Charlemagne, dating from 810, shows an altogether similar régime established on an island of a little lake in the mountains of Bavaria (Staffelsee). "On this estate are eighty-three free holdings. Six of these each pay annually fourteen *muids* of grain, four hogs, two pullets, ten eggs, one *setier* of linseed, one *setier* of lentils; the holder does annually five weeks' corvée, ploughs three days, cuts one load of hay in the master's meadow and draws it in"; and so on.

The documents of the ninth and tenth centuries—they are very rare—do not permit us to affirm that all domains were organized thus. Indeed we know of some domains which did not present the regular arrangements of those

[¹ The *setier*, Latin *sextarius*, of Charlemagne's time was probably equivalent to about $3\frac{1}{4}$ litres, or about $5\frac{2}{3}$ pints. See Longnon, as before, p. 27.]

of Saint-Germain; some where nothing was uniform, neither the area of the holdings, nor the rents, nor the *corvées* due from the tenants. Even the *mansus*¹ [holding], which on the lands of Saint-Germain appears to have corresponded to a certain value (if not an area), in most of the countries of the South was only a vague name for any tenure attached to a rural house. Often, in place of the *mansus*, we find the *colonica* (tenure of the colonus), which seems to have consisted of lands attached to an isolated house; the tenants, in that case, instead of living together near the master's house were scattered over the estate.

Nor can it be said exactly over what countries this rural régime extended; the statistical inquiry that would tell us cannot be made, for lack of documents. But it is probable that it was of Roman origin, and that it dominated almost all the ancient Roman territory of Gaul, except the mountainous regions of the Pyrenees and the environs of the old Roman towns, especially of those in the south and in the valleys of the Rhone and Saône. It is, at least, the only one which the isolated documents of this obscure period present, and it is the one which, in the thirteenth century, we find established in almost all of France.

It was also the usual régime in Italy in the thirteenth century; but in the environs of the towns, which formed a good part of the territory and withal the richest, the owners let their lands, often by a perpetual lease (the old *emphyteusis*), to renters or to farmers who worked them on shares. Spain, too, had its population of peasant

¹ The word is of Latin origin and seems to have meant at first a house (*manere*).

tenants; but, in the lands that remained Christian, many farmers lived in the fortified towns, and in the country conquered from the Moors the rural organization of the East was partly preserved. In Germany, where small owners were perhaps still numerous in the time of Charlemagne, cultivation by tenants (probably introduced by convents and princes) soon won the entire country, except some regions of the Alps and the plains bordering on the North Sea, where the peasant-owners maintained themselves. The same was true in the Scandinavian countries, but only after the fourteenth century. As for England, the register made by the Norman kings shows the entire country covered with great domains divided into parcels which tenants held through payment of dues and corvées. This organization seems to have existed before the Norman conquest.

Thus the régime of great estates, of hereditary tenures, of dues and corvées, dominated all civilized Europe. It stopped in the west only with the mountains of Wales and Scotland, in the south only before the Mohammedans. Toward the east it extended indefinitely, according as the Slavic peoples became civilized. This régime was established, in its fundamental features, from the tenth century; the documents show it completely formed toward the end of the eleventh; and from then on to the fourteenth century it changed but little. We can essay then to give an idea of the peasants in this period.

The Village.—It was still the great estate that dominated the peasant's whole life. The master's dwelling had become a fortified place, sometimes a castle, with

a reserve (fields, vineyards, meadows, fish-ponds, woods) which was very extensive, to judge by present standards. Near it were grouped the tenants' houses, which were of two different types: the complete house, built around a court¹ and with a garden adjoining, that of the comfortably situated peasant,² possessor of a yoke of oxen; and the cottage, a building in one piece, occupied by the peasant who had only the labor of his hands. Through increase of the population the group had become a village; sometimes, though rarely, a bourg with a wall. In France it kept the old Roman name of the domain, villa; people called it *ville*, and the peasants called themselves *villains*. The endings *ham* in England, *heim* and *hausen* in Germany, had a like meaning.

Connected with this village was a territory (called, in the north of France, the *finage*), whose limits remained those of the old domain. It often happened that in the course of centuries the domain had come to belong to several owners, who shared the reserve and the peasants; but the territory, like the group, remained unchanged. Everywhere, in Germany as in France, the domain grew by long custom to be fixed. Ordinarily it became the modern commune; and thus the great landlords of former times marked out the frame and created the fundamental unit of our democratic administrations. As there were still lands to occupy and forests to clear, principally in Germany, new villages,³ arose during all the middle ages, and especially in the

¹ In German, the same word, *Hof*, designates the court and the house.

² In German, he is called *Vollbauer* (full cultivator).

³ In Germany the villages established on forest clearings bear the ending *rode* or *roda*, which signifies clearing (Wernigerode, Osterode, Friedrichsroda).

thirteenth century; but they were constituted on the model of the old ones.

Leaving the reserve out of consideration, the territory of the village was cut up into small parcels which the peasants handed down from father to son. If, in certain regions of Germany, it was customary in early times to put all lands in common and divide them anew among the inhabitants,—which has not at all been proved,—this custom disappeared everywhere in the middle ages, and tenures remained perpetually in the same family.

It was very rare that the holding of a tenant consisted of a single bit of land. Ordinarily it was made up of several pieces, scattered over divers quarters of the village territory, in the form of long narrow strips; such as one sees still in the plains of northeastern France and of western Germany, where the traditional boundaries of the fields have been preserved. This division of the land frequently owed its origin to the primitive organization of the domain: it had been made in accordance with a three-year system of rotation of crops which was very common in the ninth and tenth centuries (winter wheat, spring wheat, fallow). In the course of centuries the pieces increased in number; for the tenant, in France at least, had the right to subdivide his holding, provided that the new possessors should keep up the charges. Their number could increase indefinitely, as could also the number of tenants, up to the limit of the land's resources. If the limit was passed, a famine or an epidemic reëstablished the equilibrium between the population and the means of sustenance. In Germany the

holdings often became indivisible, and beginning with the twelfth century a class of well-to-do peasants was formed.

It would be idle to try to fix the number of the rural population of Europe, even in the thirteenth century; the documents are not complete or trustworthy enough. It is very likely, from the analogy of India and of the Mussulman countries, that the population, being wretched, prolific and attached to the soil, became very dense.

The entire rural population was designated by the same name, *rustici* (peasants), *villains*, *Bauer* (cultivators). The sense attached in France to the word villain shows well enough that the other classes of the nation did not distinguish between the peasants, that they thought of them all with the same scorn. Nevertheless the condition of the people mingled together in this lower class had been, at the beginning, profoundly different; and there still remained enough of this difference to form two categories, designated in the French acts of the time by different names: the serfs and the free men.

The Serfs.—The serfs were the descendants, or at least the successors, of the ancient Roman slaves (*servi*). But in the course of centuries their condition had gradually become better. The master was also a landlord: he saw in the slave only an instrument of cultivation, and asked of him only that he make his domain bring in what it should. The rural slaves, having ceased to be sold, could marry; and they remained fixed upon the same domain, founding there a race of cultivators. Each family received from the master a house and a portion of land, which it transmitted from generation to generation and which the master gave up taking

back. The serf had become a tenant. By the simple fact that slaves had been reduced to the rôle of cultivators and that the master no longer demanded personal service from them,¹ slavery had been transformed into serfdom; just as, in an inverse sense, the Russian seigneurs in the eighteenth century, by imposing the rôles of lackeys and house-servants upon the serfs of their lands, built up again a slavery like that of ancient times.

The serf had not received his tenure as a free gift; the landlord, who remained his master, demanded from him heavier dues and corvées, often at will. He was "liable to tax and corvée at will", according to the energetic expression of the time. However, custom was so strong in the middle ages that in the end it often fixed even the dues from serfs: the landlord could ask of them nothing above what they had always paid. In an inverse sense it was not always necessary to be a serf to be taxable at will.

It seems indeed that in the middle ages the charges peculiar to the serf and a characteristic of his condition were those that denoted still a personal dependence: capitation, right of marriage, mortmain. Capitation was a charge due per head,² and was ordinarily paid annually. The master imposed it upon his serfs in virtue of his absolute right; it was a survival of slavery. The right of marriage³ was a charge paid to the landlord by the

¹ We do not mean to say that in the middle ages there were no serfs acting as house-servants; but they appear very rarely, and they are not in question when one speaks of serfs.

² It recalls the *obrok* of Russian serfs.

³ With serfdom, undoubtedly, is connected the famous "right of the seigneur", which has called forth so many bitter polemics between the admirers and the detractors of the middle ages. In the form in which light literature has made it celebrated this right is mentioned only very rarely, in documents of a late period and subject furthermore to opposed interpretations.

man or woman serf who married a person outside of the seignury. So long as the tenants of the same landlord married among themselves they did not cease to be subject to him, and their marriage was indifferent to him. At the most it gave occasion for a slight charge, but by marrying outside, the woman serf would leave her master: she could do it only on his authorization. The right of marriage, apparently, was the price paid to the master to obtain his consent to the marriage. Mortmain was the right of the master to take possession of the holding of his serf when he died without leaving a child who was living with him. The serf family only possessed its house and field by the sufferance of the master, the only real owner. The custom grew up of leaving the holding to the family as long as its members continued to live in common. But if the family became extinct or scattered, the holding returned to the owner without his having to take account of collateral kindred or even of the children of his serf who were established elsewhere; for it belonged to him. Or, if he consented to give it to the relatives of his serf, it was in consideration of a rather high repurchase right. It was this right of escheat that was called mortmain (the word appears in the eleventh century). Custom or individual contracts often fixed the amount of the repurchase right. In many Germanic countries (England, Germany, Flanders), the right was reduced to the master's deducting from the inheritance some article or one of its cattle. For the same reason that a serf could not dispose of his holding by will, he could not during his life sell it or alienate it without the express consent of his seigneur.

A more significant trait of his original servitude subsisted for a long time. The serf established on a domain could not be separated from it by his master, but he on his side did not have the right to leave it and establish himself elsewhere.¹ If he left without permission, he wronged his master by depriving him of his services; the master had the right to pursue the fugitive and bring him back. This was the right of pursuit. Sometimes seigneurs took measures against these desertions by entering into an agreement with neighboring seigneurs mutually to deliver up their serfs. In other instances they made inquests to seek out serfs who were trying to escape them either by concealing their condition, or by establishing themselves on the lands of other seigneurs, or by entering the clergy. The count of Flanders, Charles, was assassinated in 1127 for having engaged in a search in which a family of dignitaries sprung from a serf found itself compromised. The rigor of this law of pursuit was early softened. In France, in the twelfth century, the custom seems to have been established that a serf could betake himself elsewhere ordinarily on two conditions: he had to give formal warning to his seigneur (called *disavowal*); he had to give up all goods he possessed on the domains of his seigneur.

Serfdom existed, under different names, in all Europe.²

It seems that as early as the time of Charlemagne the serfs formed the greater part of the rural population, and their descendants were born serfs. Their holdings even took on after a while the condition of serfdom, and trans-

¹ The expression "serf of the glebe", often used to designate the serfs of the middle ages, is not met with in the documents.

² In Germany, the serfs were called *Leibeigen*.

mitted it to the people who came to occupy them: by living on a serf's holding a free man became a serf.¹ This is what the jurists called "real servitude."

Manumission.—On the other hand, the serf could become a free man. He could obtain his freedom individually from his master, like the ancient slave, by means of a symbolic ceremony or by a written act (charter); this latter form is the only one which persisted through the middle ages. But giving freedom individually became more and more rare; almost always the master freed all the serfs of a domain at once, changing by a single act the condition of an entire village or of an entire quarter.

Of course the master was not moved by generosity. The serfs purchased their freedom: at first by paying a given sum, especially after the twelfth century, when money became less scarce; then by binding themselves in perpetuity, themselves and their successors, to pay certain special charges which recalled their former condition.

In exchange, the master gave up the right to demand from them the charges peculiar to serfs, especially mortmain. Often also he gave up arbitrary charges and pledged himself to levy only fixed charges, but manumission did not necessarily lead to this. The situation of those who had been manumitted depended solely upon conditions agreed to between them and their master and expressly stipulated in a written contract, a charter. In any case they remained tenants of the domain; and as there was only a difference of charges

¹ The other sources of servitude—war, condemnation, donation, offering to the church—were of too little practical importance to merit more than mere mention. So also with the *coliberti*.

between the serf tenant and the free tenant, their condition was not as much modified as the pompous formulas that were employed in certain charters to vaunt the benefits of liberty would make believe. Sometimes the serfs refused to purchase their liberty at the price placed upon it, until the seigneur forced them to it.

The Free Villains. (There had always been free men on the great domains.) In the time of the Empire, along with the slaves were the coloni; later also the Germanic læts. The charters, to designate the inhabitants of a domain, said "the people, free men as well as serfs."

(The free men, in distinction from the serfs, owed nothing to the master; they were dependent upon him only in so far as he was their landlord, only because they lived upon his lands. They were renters or farmers in perpetuity. (Their holding was a fragment of the great domain.) They cultivated it for their profit, on the condition of paying either a fixed amount, like our farm-rents, or a certain part of the produce, as in our farming on shares. In distinction from the renter or farmer of our day their condition was fixed forever: the landlord could not take back their lands nor increase their rent. On the condition that they paid the old charges they were free to dispose of their holding, to bequeath it as they would, to transfer it, even (at least in France) to parcel it out.

The most fortunate owed only an annual sum, the *censive* or *cens*, which had been fixed very early and by reason of the cheapening of money had become all but nominal. The larger portion owed several charges, perhaps variable, sometimes even arbitrary, but become

regular by usage. Often the seigneur had accepted, for value received, a "subscription" contract (sanctioned by a charter) which limited each charge to a fixed figure or proportion: the tenants had become "subscribers." It is probable that free tenants who were subject to arbitrary tax and *corvée* still existed in the thirteenth century, but they were certainly not numerous.

The *hospites*, who were numerous in some provinces, were also free men.) Their name indicates that they were originally strangers, probably admitted upon the domain to clear lands not yet under cultivation. The *bordarii* of Normandy, the English *cottagers*, the *Kossate* of Germany, were small tenants, lodged in huts, who had no cattle and who paid for their holding rather in *corvées* than in rents.

The proportion of different sorts of peasants varied with the locality and with the time. It seems that the serfs were at first in the majority, at least in the north. But their number was continually diminishing. Serfdom was a residue of ancient slavery and of German serfdom, fixed upon the land and by the land; but it had ceased to be recruited, because no new slaves were made. When a village of serfs obtained a charter of manumission the territory of serfdom was cut down; and it did not increase, for no free land ever became serf again. In the most civilized countries (Italy, the south of France, Normandy), where the development took place most rapidly, it was already nearly completed in the twelfth century; there remained only free peasants.

Seigneurial Exploitation.—Dependence upon his village landlord—called in Latin *dominus*, in German *Herr*,

in French *seigneur*—was the characteristic ~~trait~~ of the peasant of the middle ages. This seigneur might be great or small, a knight, a count, a king; he might be a warrior, a bishop, an abbot, or a woman: the relations between the peasants and the seigneur remained the same. They always rested upon the right of the seigneur to take revenue and services from his peasants, and not be in any way obliged to them in return, save to leave them the possession of his land. This was an exploitation (the word itself dates from this time).

How it was established is one of the most disputed questions in the history of the middle ages, and the documents are too rare and too imperfectly studied to permit of its solution. It was in the logic of the organization of the great domains that the tenant should be constrained to dues and corvées and subjected to the landlord's intendant; this still happens to-day. But as a matter of fact we know also of examples of exploitation that originated in usurpation or violence: functionaries who transformed the rights of their office (for example, rights of toll or of requisition, or the right of imposing fines) into perpetual property rights; laymen who took for themselves the tithes originally created for the profit of the church; seigneurs who exacted a payment from the peasants of another domain under the name of guard-money, that is to say, assurances against their own brigandage; landlords who increased unduly the charges of their tenants. What was the origin, in any given village, of such and such an obligation of the inhabitants, or indeed in what proportion violence, usurpation, and fraud united with the primitive right

of the landlord to form this régime, statistics alone could tell us; and these statistics will never be made.

But the obscurity as to origins does not hinder us from forming a clear idea of the régime as it was in the thirteenth century. At first peasants had been able to distinguish between the charges they considered legitimate and the unjust exactions established by violence or by fraud, which they called "bad customs" (the expression is frequent especially in the eleventh century).

(In time usage had legitimized the "bad customs" and fixed all the obligations of the peasants.) These obligations, which were later called feudal rights (improperly, since they had nothing in common with the *fief*), differed a little from one village to another. The same obligation often had a different name in different places. It would therefore be a long task to draw up a list of these names (Du Cange gives one which takes up twenty-seven quarto columns). But under these different names there existed an analogous régime in all Europe. Considering simply the form of these obligations, not their origin, they can be distinguished as redevances, prestations, and corvées.

Redevances.—The redevances were paid either in money or in produce; they were due at fixed times or on the occasion of certain acts.

(The fixed redevances paid in money were especially (besides the capitation of the serfs) the redemption taxes, the *cens*, the *taille*.) The *cens* was a money payment due from the tenant on account of his tenure, a sort of farm-rent, fixed by old custom. If the tenant did not pay it at the stipulated time, the seigneur could

take away his tenure; } or at least exact, with the original sum, a supplementary fine. In some countries redevances also existed upon the house or the chimney (*masuragium*, *focagium*, *fumagium*). The *taille* (or *questa*) was a regular charge levied one or more times yearly upon each family of tenants. The name (which is not found before the eleventh century) means simply the notch made with a knife on a bit of wood at the time when the charge was paid. Whatever its origin may have been, whether it was a form of the capitation of serfs or a new right imposed upon all tenants, the *taille* became so general that in ordinary language it stood for all of the redevances: people said "*tailleable* at will." The *taille* appears at first to have been arbitrary (at the will of the seigneur, *à merci*).¹ The peasants seem to have tried hard to fix it; at the end of the thirteenth century they had succeeded in their endeavor almost everywhere, often by buying a contract from the seigneur in which he agreed thenceforth to demand only a fixed² sum. Sometimes the wife of the seigneur interceded for the poor tenants and her intervention gave rise to a touching legend, like that of Lady Godiva. The redemption taxes represented old charges paid in produce, which had been suppressed by an agreement with the seigneur.

The redevances paid in produce and due at fixed times consisted especially of a part of the products of the soil, collected after the harvest; just as this is done to-day in regions where farms are worked on shares. Thus the

¹ Which means without other limit than the mercy of the seigneur. *

² Besides the regular *tailles* the seigneur sometimes levied an extraordinary *taille*, on certain exceptional occasions, such as the marriage of his daughter.

seigneur took a part of the sheaves of wheat (*campipars*, *gerbagium*), of the oats (*avenagium*), of the hay (*fena-gium*), of the vintage (*vinagium*, *complantum*), of the chickens, of the wax.¹ He also levied a charge in money or produce for each head of stock (ox, sheep, pig, or goat).

Many redevances fell upon certain acts, and the number of acts subjected to such a charge increased during the middle ages (at least the names which designate them appear but rarely until after the tenth century). In the thirteenth century, we find a system of charges upon transfers: *lods* (*laudes*) and *ventes*, a right paid by the tenant when he gave or sold his holding to have the seigneur approve the transfer; the charge upon succession (relief or redemption),—without counting the mortmain on the succession of serfs or the right of escheat in the case of goods to which there were no heirs. We also find a number of charges on circulation, some of them very old; on roads (*carriagium*, *roagium*, etc.), on bridges, on rivers, in ports, at the passage of gates; and a group of charges on commerce and industry: rights on the sale of wheat, of salt, of meat, of merchandise, and rights upon markets (including charges on the location of tables and of reserved places in the hall, and on the merchants' hampers) and upon fairs.

Banalities.—There was a whole system of redevances that were attached to obligations imposed by the seigneur, and that took the form of a monopoly. These were the banalities. They appear in the documents only after the tenth century. Their name shows that they were

¹ Wax was needed for the candles in the churches and for the seals affixed to acts. Consequently beehives were much more numerous in the middle ages.

organized by means of the ban, which was the power of the seigneur to issue proclamations and to have them executed under penalty of fine; but the origin of this power is obscure and controverted.¹

The tenants were obliged to have their grain ground at the *banal* mill, to have their bread baked in the *banal* oven, to have their grapes pressed at the *banal* press; and each time they had to pay a charge (ordinarily a portion of the grain, of the flour, or of the vintage). The seigneur exacted a payment from the tenants for allowing them to cut wood in his forests, or graze their stock in his pastures,² or fish in his waters (ordinarily the seigneur reserved the right to hunt exclusively to himself). The seigneur also imposed the exclusive use of his weights and measures, and this was still another occasion for redevances. The seigneur forbade his tenants to sell their grain or their wine within a certain time after the harvest, and during this time he sold his own without competition. All these monopolies were more oppressive to the tenants than profitable to the seigneur.

Rights of Justice.—(These also were redevances, rights which the seigneur levied in virtue of his power of jurisdiction.) The people of the middle ages certainly understood it so, for in the acts where the lucrative dependencies of a domain are enumerated, we find justice

¹ The question most discussed is whether the seigneur acted in virtue of his right as landlord or whether he was exercising a public power, legal (delegated by the sovereign) or usurped.

² It is not agreed whether the woods and pastures had always belonged to the landlord, who conceded only the use of them to his tenants, or whether they were formerly goods held in common, later usurped by the seigneur. The latter opinion is connected with a general theory which makes collective ownership the primitive régime of all Europe. It has scarcely any documentary foundation and has been strongly combated by Fustel de Coulanges.

figuring along with lands, vineyards, meadows, woods, mills. In almost all the documents of the middle ages, justice means the right of levying fines or the product of those fines. Very often this right was shared with other persons, and mention is made of the half or quarter of the justice of such and such a village. (They even came to distinguish between high and low justice) (later also middle), according to the value of the profits. (Ordinarily high justice meant that one had the right of levying fines of more than sixty sous) They brought under this head the right of condemning to death, which entailed the right of confiscating the goods of the condemned.


What was the origin of these justices? Was the right of rendering public justice, formerly reserved to the sovereign and his functionaries (dukes, counts, *centenarii*), given to or usurped by the seigneur? Or did he only extend the domestic power exercised from time immemorial by the master over the serfs of his household, by the landlord over the tenants of his lands? The problem is not yet considered solved. But we must resist the natural temptation to imagine "high justice" as a privilege reserved to a few great seigneurs. In France especially, the seigneur of a single village (and at the beginning each village was simply a single domain) almost always had high justice over his tenants.) Beaumanoir, at the end of the thirteenth century, says that all the vassals of the count of Clermont had, on their lands, "all justice." If Normandy was an exception, it was because the duke, who organized it, reserved the right of condemning to death (justice of the sword) to himself. We must also remember that justice, having been treated

like every other lucrative property, was often divided up, in such manner that the primitive extent of the rights it conferred was rendered unrecognizable, especially in the thirteenth century.¹

Organized as we see it in the twelfth century, justice was a form of the exploitation of tenants by the seigneur. The word exploit was even used to designate judicial formalities; they said "subject to taille and to justice", or "subject to exploitation." And like the taille, justice could be either arbitrary or limited; that is to say, the fine could be either at the will of the seigneur or fixed at a definite sum. In general, the amounts had become fixed. Custom finally established a certain fine for each crime. Frequently also the seigneur made a contract with the peasants which regulated the tariff of fines. Here is an example in the year 1239, taken from a village in Belgium (Sirault); it shows with what definiteness all cases were provided for: "The spoken insult is at four sous, the lie is at five sous. Whosoever strikes another . . . it is at ten sous, and if blood flows it is at twenty sous. Whosoever draws a cutting weapon without striking, it is at thirty sous. The blow of a club is at twenty sous, and if blood flows, at forty sous. The blow of a cutting weapon is at sixty sous." For grave crimes (murder, arson, rape, and ordinarily larceny) the right of the seigneur remained discretionary. The penalty was death or banishment, and the seigneur confiscated all the goods of the condemned.

¹ The jurists, beginning with the fifteenth century, ceased to understand the social organization of the middle ages and aided in accumulating around the question of the origin of the justices a mass of clouds which are all brought together in the book of Championnière: *Traité sur la Propriété des Eaux Courantes*, 1846.

Out of the right of justice arose also the redevances the tenants paid to be exempted from attending the three annual judicial assemblies (general pleas); the payments levied upon tenants who pleaded among themselves before the tribunal of the seigneur; and probably the rights of seal, record, notary, paid for having private acts drawn up and authenticated (rights which still subsist).

 **Prestations.**—(Much less important than the redevances, the prestations were irregular charges, requisitions, which the seigneur exacted, though by what title it is often difficult to say.) The most frequent was the right of entertainment, due often to a seigneur who was not the landlord of the village. The peasants had to receive the seigneur when he came into the village, lodge him and his escort, horses, dogs, and falcons, serve a meal to the men and feed the animals. This ruinous obligation was gradually regulated. Custom established how often the seigneur had the right to demand hospitality (ordinarily three times per year), how many men and animals he could bring along, and how liberally he was entitled to be served at table. Then the right was converted into an annual tax.

(The right of seizure was the right of the seigneur to take what he must have for the needs of his house, provisions,) beasts of burden, ploughs, fodder, even beds; ordinarily at some price, either arbitrary or fixed. The right of credit permitted the seigneur to require merchants to give him on credit the articles he demanded of them. Ordinarily the time of the credit was limited.

Corvées.—The corvée, that is to say, (the obligation to go and perform certain work in person,) existed before

the middle ages, and under two forms: (the landlord exacted corvées from his tenants for his service) (the State imposed corvées upon the inhabitants for the maintenance of roads and bridges.) Both reappear in the middle ages, but by far the more important were the corvées of the landlord.

(The tenants had to aid the seigneur in cultivating his domain: they must plough his fields, dress his vines, harvest his grain, mow his meadows, draw in his sheaves and his hay. (Usually these services were regulated: the tenant subject to corvée owed a fixed number of days per year; he owed either simply the work of his hands (*manoperæ*), or the service of his beasts, of his plough, of his carts (*carroperæ*). Custom sometimes decided that he should be supported by the seigneur, and how he should be supported.

(The tenants had to do transport service for the seigneur) fetch firewood, stone, furniture, and food. They had to perform the seigneur's commissions. They had to keep up the roads, repair buildings, clean out the castle moats and the seigneur's fish-ponds.) They owed assistance in case of flood or of fire. They must aid the seigneur in his wars, go and mount guard in his castle by day or by night (this was the *gueta*), construct fortifications, dig moats, make palisades; they were even obliged to follow him to war when he made an expedition into the neighboring country (this was the *exercitus*, or *hostis*, and the *cavalcata*).

Of the old State corvées those for the maintenance of highways, of bridges, and of dikes were perhaps preserved; but it is difficult to distinguish them from the corvées established by the seigneur for his own profit.

The Intendant.—To collect so many different rights, to exact so many services, was a complicated and absorbing task. The seigneur did not care to take it upon himself. Except in the case of some convents perhaps there could not be found in the middle ages a single great domain managed directly by the seigneur. (Everywhere the seigneur delegated his powers to an intendant) the tenants had relations only with the intendant. An analogous régime subsisted until recently on the great estates of Hungary and Russia.

We have not documents enough upon the domains of small lay seigneurs to say how affairs were managed there. Almost all we are acquainted with is the exploitation of the ecclesiastical domains and of those of the great seigneurs.

(It seems that at the beginning there was an intendant in each domain,) ordinarily a peasant, sometimes even a serf. The Latin texts call him now *major*, now by an old Roman name, *villicus*; in German he is called *Meier*, or *Schultheiss* (collector). He held a more important tenure than the other tenants. Frequently the functions became fixed in the same family, and the domain, from the eleventh century, was administered by an hereditary mayor whom the proprietor could no longer dismiss. Where the domain belonged to several seigneurs, the intendant often continued to administer it for all; the joint owners then came to an agreement as to the division of revenues and profits.

But in the thirteenth century, in the case of a great number of villages, there appears to have been a division among several intendants who each acted for a different seigneur. We see very frequently, especially upon the

domain of a convent, an intendant charged with the administration of tenants scattered in several villages. This was a consequence of the dismemberment of the villa. The isolated tenures were then attached artificially to a center of exploitation located outside of the territory of the village; the intendant's house was situated in a village of the environs: in Germany this was called the *Frohnhof* (the corvée house).

When a seigneur possessed several villages in the same quarter he put them in one group and entrusted them to a superior intendant, called in the north provost (*praepositus*), in the south *baile* (*bajulus*), in Germany *Amman*, in some places châtelain. Also these intendants frequently became hereditary; and there were even infeudated provostships, that is to say, given in fief. The name provost was applied also to the intendant of a single village.

(The intendant represented the landlord, who left to him the exercise of all his rights.) He managed the reserve, kept the buildings in repair, cultivated the fields, harvested the crops. He called for and superintended the corvées. He levied the redevances that were fixed and fixed those that were variable, usually after having consulted the notables of the village "in order to find out each one's means." He farmed out the oven, the mill, the wine-press, the market. He saw that the ban was cried. He had evil-doers arrested, rendered justice, collected fines and executed persons sentenced to death. He led the tenants to the army of the seigneur.

Ordinarily the intendant received no salary for his services: he looked after his pay himself, by keeping a

part of the profits. In France, from the twelfth century, the provostships even came to be farmed out; they were sold to the highest bidder for a certain number of years. The intendant was by no means a functionary who was paid to administer a village; his post brought him what he could make out of it, for it rested with him to take much or little from the tenants. The petty rapine and innumerable vexations which such a régime stood for can easily be gathered from the example of the Russian intendants before the abolition of serfdom.

Characteristics and Extent of the Seignorial Régime. — It is hardly possible by a single case to give a full idea of so complicated and varied a régime. The following example is taken from an ecclesiastical domain in the thirteenth century, in a province (Normandy) where the condition of the villains was quite favorable. The details, drawn from a short satirical poem which pictures the life of the villains of Verson, are confirmed by the cartulary of the Abbey of Mont-Saint-Michel, by which the village was controlled.

The tenants must fetch stone, mix mortar, and serve the masons. Toward the last of June, on demand they must mow and turn hay and draw it to the manor-house. In August they must reap the convent's grain, put it in sheaves and draw it in. For their tenure they owe the champart: they cannot remove their sheaves before they have been to seek the assessor of the champart, who deducts his due, and they must cart his part to the champart-barn; during this time their own grain remains exposed to the wind and rain. On the eighth of September the villain owes his perk-due, one pig in eight; he has

the right to take out two, the third choice belongs to the seigneur. On the ninth of October he pays the cens. At Christmas he owes his chicken-due; also the grain-due of two *setiers* of barley and a quart of wheat. On Palm Sunday he owes his sheep-due; and if he does not pay it on the day set the seigneur fines him, arbitrarily. At Easter he owes *corvée*: by way of *corvée* he must plough, sow and harrow. If the villain sells his land, he owes the seigneur the thirteenth part of its value. If he marries his daughter to any one outside the seigneurie, he pays a marriage-right of three sous. He is subjected to the mill-ban and the oven-ban: his wife goes to get bread; she pays the customary charges;¹ the woman at the oven grumbles—for she is “very proud and haughty”—and the man at the oven complains of not having his due; he swears that the oven will be poorly heated and that the villain’s bread will be all raw and not well browned. The picture stops with this trait, which shows the villains a prey to the bickerings of sub-alterns.

This agricultural régime is not what we are used to. It unites in a confused whole all the systems which we now see working separately. To-day we have cultivation on a large scale, practised by the large landowners, and cultivation on a small scale, practised by the small landowners. The middle ages was a time of ownership on a large scale and cultivation on a small scale; the great landowner distributed the larger part of his domain among peasants who practised cultivation on a small scale in the manner of our small landowners. To-day

[¹ They are specified in the original: “fournage, le tortel, l’aïage.”]

the landowner who does not cultivate his land himself usually chooses between two plans: either he exploits it directly through laborers paid by the day, or he gives it over to a farmer or renter for a definite sum or for a share of the produce. In the latter case he takes back the land on the expiration of the contract. (In the middle ages the owner employed the same men as day-laborers on his reserve and as renters on the lands that he did not exploit directly.) But they were day-laborers who received no pay and hereditary renters from whom he could not take back the land they cultivated.¹

X. The landowner, in allowing generations of tenants to succeed each other upon the same soil, by a sort of prescription lost his absolute right of disposing of the land. The tenants, in return for this hereditary possession, remained subject to pecuniary or personal charges, which constituted a sort of rent. These pecuniary charges and these *corvées*, which were due to the seigneur, cannot therefore be compared to a tax or a public prestation; they rested upon the same principle that underlies the obligations of modern farmers and renters: they grew out of the right of the owner to make the tenant pay for the service rendered him in lending him land. The difference is that while our farmers have but a precarious possession and are in danger of seeing their charges increased at the end of the lease, the tenant of the middle ages enjoyed an assured possession, encumbered only with fixed charges. He was consequently in a firmer situation, one that was nearer to ownership.

¹ There were also temporary farmers and renters, like ours, especially after the twelfth century. But this was exceptional.

And yet the feudal rights (as they were improperly called later) were destined to become so odious that it was necessary to abolish them in all Europe. This was because the peasants, become hereditary possessors, finally looked upon their tenure as a property encumbered with servitudes. They deemed themselves owners, not farmers. The seigneur seemed to them a parasite who rendered them no service in exchange for what he took from them.

The other characteristic trait of this régime is that there was no State over the seigneur to step in between him and his peasants, as the modern State steps in between the owners and the farmers. "Between thy villain and thee there is no other judge but God", says a French jurist of the thirteenth century. In most countries the tenants did not have even the right to come together to deliberate on their common interests, except by the permission of the seigneur. Illicit assemblage was a crime punishable by an arbitrary fine. Thus the peasants were irremediably subject to the seigneur and to his intendant. The seigneur, too, was at the same time party and judge, and no superior power obliged him to remain within the limits of his rights. The condition of the peasants therefore depended upon the character of the seigneur and of the intendant, and consequently always remained precarious.

We should be giving ourselves a false impression if we imagined that all the peasants of Europe were under the régime which we have just described. During the entire middle ages there remained some peasants who were full owners, independent of the seigneurs of the neighbor-

hood, subject only to the prince of the country, sometimes even organized into communities: the freeholders of Aquitaine, the mountaineers of Bearn, of Bigorre and of the Basque countries, the free men of Schwyz and Appenzell, the free peasants of the Alps, of Westphalia and of Friesland,—not to speak of the farmers of Normandy, the English free tenants and the emphyteutas of Italy. But such persons formed only scattered and widely separated groups; and we should be giving ourselves a much falser impression still if we imagined that even as many as a quarter, say, of the peasants of the middle ages were in the condition of these privileged few.

II

THE NOBLES AND THE HIGHER CLERGY

The Nobles; their Arms.—In all the Europe of the middle ages, those that were rich enough not to have to work formed a privileged class, sharply separated from the rest of society. All who were in this upper class, except the clergy, were warriors by profession.

Charlemagne already had required that all the free men of his empire should bear arms. The necessity of defending oneself, the taste for idleness and adventure, and the prejudice in favor of the warrior's life led in all Europe to the formation of an aristocracy of men of arms. There was no need of the State's higher authority to impose military service. The life of war being alone esteemed among laymen, each one sought to lead it; the class of men of arms included all who had the means to enter it.

The first condition was to be able to equip oneself at one's own expense. Now, from the ninth century, almost all combat was on horseback; accordingly the warrior of the middle ages called himself in France *chevalier*, in southern France *caver*, in Spain *caballero*, in Germany *Ritter*. In the Latin texts the ancient name of the soldier, *miles*, became synonymous with *chevalier*.

In all Europe, war was carried on under the same conditions and the men of arms were equipped in about the same way. The man completely armed for battle—the

chevalier, or knight—had his body protected by armor. Down to the end of the eleventh century this was the byrnie, a tunic of leather or cloth covered with metal scales or rings; then the byrnie was everywhere replaced by the hauberk,¹ a coat of metal mail with sleeves and a hood, opening at the top in such fashion that it could be put on like a shirt. The hauberk at first came down to the feet; when it was shortened to the knee the legs were covered with greaves of mail, which protected the feet and to which was fastened the spur, of the form of a lance-point. The hood concealed the neck and the head, and came up to the chin, allowing simply the eyes, nose and mouth to show. At the moment of combat the knight covered his head with the helm, a steel cap in the shape of a rimmed cone, topped by a circular knob of metal or glass, the crest, and provided with a blade of iron which protected the nose, the nasal.² This helm was laced to the hauberk with leather strings. Only in the fourteenth century appear the armor of metal plates and the visored casque, which were to last down to the seventeenth century—the armor of Bayard and of Henry IV, which we are too often tempted to imagine as characteristic of the knights of the middle ages.

(To parry blows, the knights carried the *écu*, a buckler of wood and of leather bound together by bands of metal, provided in the center with a buckle of gilded iron (whence the name buckler).) The *écu*, after having been

¹ In the Bayeux tapestry, made some years after the conquest of England (1066), the greater part of the knights are represented as wearing the byrnie, but some have the hauberk.

² The nasal disappeared at the end of the twelfth century.

round, became oblong, and lengthened out in a manner to cover a man on horseback from his shoulder to his foot. (It was carried suspended from the neck by a wide strap;) at the moment of combat it was swung to the left arm by means of handles placed on the inside. It was on the écu that the arms which each family had adopted as its emblem were painted, beginning with the twelfth century. The offensive arms were the sword, ordinarily wide and short, with a flat pommel, and the lance, made of a long thin shaft (of ash or elm), terminated by a lozenge-shaped point. Above the point was nailed a rectangular band of cloth, the gonfalon, which floated in the wind. The lance could be stuck into the ground by the handle, which ended in an iron point.

Thus covered and armed, the knight was well-nigh invulnerable; and his armor was brought nearer and nearer perfection, rendering him like a living fortress. But in consequence he was so heavy he had to have a special horse to carry him in battle. He was provided with two horses: the palfrey, which he rode when on a journey, and the *dextrarius*, led along by a valet. The moment before combat the knight put on his armor, mounted his *dextrarius* and went forward, holding his lance before him.

(The knights were looked upon as the only real men of arms;) the accounts of combats speak only of them; they alone formed the battle-lines. But other cavaliers went with them on their expeditions, who were covered with a tunic and a bonnet, provided with a lighter and less costly equipment, armed with a small buckler, a narrow sword, a pike, an axe or a bow, and mounted upon horses

of less strength. They were the indispensable companions of the knight; they led his battle-horse,¹ carried his buckler, helped him put on his armor the moment before combat and mount into the saddle. In consequence they were ordinarily called valets or squires; in Latin, *scutifer* or *armiger* (he who carries the shield or the armor). For a long time the knights kept these valets of arms at a distance; even at the end of the eleventh century the *Chanson de Roland* speaks of squires as of an inferior class. They kept their head shaved, like servants, and at table they were served a coarser bread. But little by little the brotherhood of arms brought the knights and the squires together. In the thirteenth century they formed one class, the highest in lay society, and the ancient Latin name of noble (*nobilis*), which designated the first class (in German *edel*), was given to them all.

Degrees of Nobility. (To lead the life of a warrior it was necessary to have the means to live without working.) In the middle ages no one was noble unless he had a revenue sufficient to support him. (Ordinarily this revenue was furnished by a landed estate) (the noble possessed² a domain; and as he did not cultivate it himself (honor forbade that), he had it cultivated by his tenants.) In this way the noble usually exploited at least a few families of villains, in relation to whom he was a seigneur (in Latin *dominus*; whence the Spanish *Don*). But while a sufficient revenue was the practical condition in order to be a noble, there were inequalities of possession among

¹ On the right, whence the name *dextrarius*.

² It will be shown farther on in what different ways a noble could be a possessor.

the nobles, glaring inequalities which established a series of degrees, from the squire to the king. The people of the time saw these degrees clearly enough, and even distinguished them by names.

(In the highest grade were the princes who had some titled dignity) (kings, dukes, marquises, counts), sovereigns of an entire province, possessors of hundreds of villages, who could take several thousand knights to war.

Then came the higher nobles, ordinarily possessors of many villages,) who led a troupe of knights to war with them. As they had no official title they were designated by names of common speech, whose meaning was vague and somewhat elastic; names which differed with the country but were used synonymously. The most frequent were: *baron*, in the west and south of France and in the Norman regions; *sire* or *seigneur*¹ in the east (baron designated the man, the man par excellence: sire signified both leader and master). In Lombardy they were called captains, in Spain *ricos hombres* (rich men). In Germany people said *Herr*, which corresponds to seigneur; in England, lord; the translation into Latin was *dominus* (master). Later they were also called bannerets, because, to rally their men, they had a square banner at the end of their lance.

(Under these came the bulk of the ancient nobility, the knights) (in German *Ritter*, in English knight, in Spanish *caballero*, in Latin *miles*), possessors of a domain which consisted, according to the richness of the country, of an entire village or of a portion of a village. Almost all were in the service of some great seigneur, from whom they

¹ Sire is the nominative, seigneur the accusative.

held their domain; they followed him on his expeditions. This, though, did not hinder them from making war on their own account. They were sometimes called bachelors, in Lombardy vavasors. Also one finds the striking expression *miles unius scuti*, knight of a single shield, who had no other knight under his orders.

(At the bottom of the ladder were the squires.) At first simple valets of arms in the service of a knight, they became possessors of lands (of the extent of what we to-day call a great estate) and in the thirteenth century they lived as masters in the midst of their tenants. In Germany they were designated as *Edelknecht* (noble valet), in England squire (corruption of the word *écuyer*), in Spain *infanzon*. They formed the bulk of the nobility in the thirteenth century, and in following centuries enobled bourgeois proudly took the title of squire.

(We can thus distinguish four degrees, which correspond roughly to military grades; the princes, dukes, and counts would be generals, the barons captains, the knights soldiers, the squires servants.) But in this strange army, where the groups of which it was composed made war against each other and where wealth decided rank, the community of life finally attenuated differences to the point where all, from the general to the valet, began to feel themselves members of the same class. Then the nobility was definitely constituted, then it came to be a closed and isolated class.

(In the thirteenth century it became the custom to divide men rigorously into two classes, the nobles or gentlemen (well-born men) and the not-nobles, who were called in France customary men or subject-men) (the

word *roturier* was not used in the middle ages). And these classes became rigorously hereditary. The noble families refused to mix with descendants of not-noble families. A man who was not the son of a noble was not allowed the privilege of becoming a knight, even though he was rich enough to lead the life of a knight; the daughter of a not-noble could not marry a noble; he who consented to marry her made a misalliance and thereby dishonored himself; his wife would not be received in the noble families, and his children would not be treated by the nobles as equals. This heredity, which appears less marked in the documents of the preceding centuries, became the dominant trait of society down to the eighteenth century. (In proportion as degrees between the nobles were effaced, the noblesse became more separated from the rest of the nation.) It was in France and Germany that the aristocratic sentiment established itself most strongly. It was weakened in Spain, especially in the south, by contact with the rich inhabitants of the Moorish towns, and in Italy and perhaps in the south of France by the social influence of the merchants. In England, where habitual warfare ended early, nothing distinguished the squire from the rich peasant; the demarcation was established much higher, between the lords and the rest of the nation, and the privileged class was reduced to a high aristocracy of limited numbers.

Chivalry.—The warlike society formed by the knights had its usages to which all were bound. The arms of the knight were difficult to handle; before bearing them, it was necessary to have served an apprenticeship. It

was an honor to bear them; before doing so one must have been declared worthy of this honor. No one was born a knight; he was made a knight by a solemn ceremony; the king himself had to be made a knight.

Every young noble began by learning the metier of a man of arms; ^{to go along with} to mount a horse, to handle arms, to climb a scaling-ladder. But he could serve his apprenticeship either in his father's house (which especially the sons of great families did) or in that of a stranger (apparently the more usual procedure). Ordinarily the father sent his son to a seigneur richer than himself, who took the young man into his service and brought him up; whence the expression *nourri*, often found in the *chansons de geste* (the seigneur said: my *nourri*). Apprenticeship was complicated with the service of squire; but with this service of a valet of arms was joined the service of a valet de chambre, a characteristic of chivalry customs. The squire assisted his seigneur in dressing and undressing; he brought in the courses and served at table; he made the beds. These duties, which the ancients regarded as debasing and imposed upon their slaves, were honorable in the eyes of the nobles of the middle ages (so had they been in the eyes of the Germans: Tacitus made note of it). During this period, which lasted from five to seven years, the young noble, called a squire or page (little seigneur), did not have the right to bear arms.

(When he had finished his apprenticeship, ordinarily at from eighteen to twenty years old, if he was rich enough to lead the life of a knight, he entered into knight-hood by a martial ceremony,) described in the *chansons de geste*. The young man first went through a bath, then

donned the hauberk and helmet. A knight, sometimes his father, more often the seigneur who had brought him up, girded with him the sword which he was thenceforth to carry.) This was called dubbing and was the essential act. Ordinarily the knight struck the young man a blow of the fist upon the back of the neck: this was the accolade. Afterward the new knight mounted his horse, took a lance, and did an exercise in galloping and in striking at a manikin prepared in advance: this was the quintain. Such was the ceremony of making a knight in the twelfth century. It was sometimes even reduced to a single act, the *colée*, the blow upon the neck: this was a means of avoiding expense. Beaumanoir speaks of an inquest which, to be valid, called for a fixed number of knights. As one was lacking to their number they forthwith made a knight of a gentleman present. One of them gave a blow and said to him: "Be thou a knight."

(Later the clergy introduced acts which turned the entrance into knighthood into a complicated religious ceremony.)¹ After a fast, the young man passed the night preceding the dubbing in prayers: this was the vigil of arms. In the morning he went to mass; the sword was laid upon the altar, as if to consecrate it to the service of God; the priest blessed it: "Lord, hear my prayers and deign to bless with Thy majestic hand this sword which Thy servant . . . desires to gird upon him." Then came a sermon, in which his duties toward the church, the poor and the widowed were recalled to the future knight.

¹ There is an Italian formulary for blessing the sword which dates from the end of the eleventh century, but the usage did not spread until the thirteenth century.

They usually chose for the ceremony either the great feast-days, especially Easter and Pentecost, or some exceptional event, the marriage or baptism of a prince; or even the occasion of a battle. In that case they dubbed a whole troop of new knights at the same time.

(Only the rich became knights.) Men of gentle rank who were poor did not care to bear the cost of the ceremony and the expense of the knight's life; they preferred to remain squires. There were consequently two sorts of squires, those who were not old enough and those who were not rich enough to become knights. In England, where knighthood was useless, almost all gentlemen ceased to have themselves received into knighthood and were content to remain squires.

Donjons, Castles and Manor-houses.—(The noble of the middle ages was not only a warrior; he made a fortress of his dwelling.) Already the great Roman landlords had sometimes fortified their country houses; but the custom does not appear to have become general in France until toward the tenth century.

Of the old fortified houses of this time not one has been preserved. We know them only through rare remains and by scattered allusions in the writers. It seems that these strongholds (*firmitates*) were made only of wood and earth. Immediately around the site where one wished to build he dug a wide, deep foss; the earth, thrown up on the inside, formed an artificial mound, the *motte*. For an outer defence square wooden posts were set in the ground and strongly bound together in such a way as to form a continuous palisade, which oftentimes was fortified from place to place by wooden towers.

Within this enclosure were erected the wooden buildings which served as lodgings for the servants, as stables, granaries and storehouses. Dominating all rose a large square tower, of wood, which was covered in case of siege with skins of fresh-slain beasts, to prevent its being set on fire: this was the donjon (*dominium*), that is to say, the house of the master. The door was a little above the ground, and was reached only by a wooden stair which led down over the foss toward the open country. Such were the donjons of the north in the tenth century.¹

- In the south of France the earth and wood were replaced by stone. (Thick walls and square towers were built of masonry, in imitation of the Roman fortified towers (*castra*).) Toward the twelfth century this custom became general in Europe. Then the square towers and right angles were replaced by round towers and rounded corners, more advantageous for defence. These constructions retained the Latin name *castellum* (diminutive of *castrum*); in the south, *castel*; in the north, *château*; in English, castle. Often they were also called *plessis* (palisade).

(The castle consisted of a group of fortifications.) It was built on a scarped hill, on a rocky promontory, or on an artificial height, a *motte*, in a position to dominate the environs. It was always isolated, either by a continuous moat, which was filled with water when possible, or at least by a cut on the side of the mountain. Means of defence were multiplied. Coming from the open country one was first confronted by the barbican (devised after

[¹ Compare the illustration in Viollet-le-Duc, *Dictionnaire de l'Architecture Française du XI^e au XVI^e Siècle*, vol. iii. p. 64.]

the thirteenth century), a fortification out beyond the moat. Next came the moat, which was often filled with water. Behind the moat stood a palisade called the barriers. Behind these barriers was a space encircling the enclosing wall, or curtains. This wall was sloping at the base, and was thick and high. Those who were besieged could move about at its summit, on a circular path constructed in its thickness, and hurl missiles through apertures called crenelles. They could also throw stones or pour molten pitch or boiling oil from galleries covered by open work which projected out from the crenelles in a way to permit dropping such matter directly over the foot of the wall (down to the thirteenth century these galleries were of wood and were called *hourds*; they were replaced by machicoulis of stone). This enclosure protected all the buildings.

To enter the castle in time of peace, one crossed the moat, no longer on a stair but on a drawbridge suspended by chains, the raising of which interrupted communication. Next one arrived before a massive door protected by the barrier and by the portcullis, an iron gate which had only to be let down to close the passage. Finally, on going through this vaulted door (which was guarded by a porter) one came within the enclosure to the bailey, a court surrounded by buildings (granaries, storerooms, chapel, kitchen, out-houses); in some great castles an entire village might be found there. It was to this place that the tenants of the neighborhood betook themselves and their goods and chattels in case of war.

The principal structure was always the donjon, which had become a colossal tower of three or four stories.

One reached the door by the perron, a stone stair. The donjon of Beaugency was about one hundred and thirty feet high and eighty in diameter, that of Coucy about two hundred and ten feet high and one hundred in diameter. Here the master lived, had his grand hall where he received guests,¹ his room, rooms for his family, and his treasure. Underground he had his prison, dark, damp, dirty, into which prisoners were lowered by a ladder or rope. At the summit was the lodge where the watch kept lookout over the environs. The seigneur could defend himself in the donjon even after the enemy had forced the enclosing wall.

(Throughout Europe these fortresses became the homes of the seigneurs, so that the word castle has kept the meaning of a luxurious habitation.) But only the rich could stand the cost of these massive buildings. In consequence at first there was a castle only where a seigneur lived who possessed a small town or several villages, so that in some countries the name *chatellany* was given later to a territory formed by the group of villages connected with a *château*. The number of castles grew with the increase of wealth, but down to the end of the middle ages there never were as many castles as there were knights.

(The nobles of less means contented themselves with a house made strong by thick walls, by a massive door which was sometimes defended by a *machicoulis*, and by high windows.) This was the manor-house (from *manere*, to inhabit), which sufficed to resist a surprise.

¹ The greatest seigneurs sometimes had a special hall outside of the donjon, the palace (in German *Pallas*).

(The nobles living in the towns)—and they were numerous, especially in Italy, in Spain, and in the south of France—had strong houses built there which were very like the manor-houses of the country!

These donjons, manors and strong houses all had thick high walls; winding stairs lighted by loopholes; and damp, somber rooms, where the light entered only through narrow openings. (They were fortresses, not pleasant homes.) Life in them was sad, especially during the long winter evenings. In fair weather people gladly remained in the orchard, outside of the enclosure. A scholar who loved the middle ages¹ tried to count up the pleasures which a seigneur might enjoy. He found fifteen: hunting, fishing, fencing, jousting, playing chess, eating and drinking, listening to the songs of the jongleurs, watching bear-fights, receiving guests, talking with the ladies, holding his court, walking in the meadows, warming himself, having himself cupped and bled, and watching the snow fall. These pleasures were scarcely enough to keep the nobles at home. When possible they visited the court of a prince, or they went on expeditions into distant countries. The nobles were as ready to move as the peasants were sedentary. Nevertheless, through their castle or their manor-house, they remained attached to the land, as is seen by their very names: from the twelfth century almost all surnames of nobles were land-names (Bouchard de Montmorency, Enguerrand de Coucy).²

¹ Léon Gautier, *La Chevalerie*.

² These names naturally took the form *de*; whence the presumption that the "particle", as it is called (*de* in the Romance languages, *von* in German), is a mark of nobility. This is a double error. There were, even in the sixteenth century, knights who had only the patronymic; and on the other hand thousands of not-nobles were called by the name of a domain or village.

Homage and Fief.—It will be a matter of astonishment, perhaps, that in this description of feudal society no mention should have been made as yet of feudal relations. (This is because the society of the middle ages did not necessarily imply feudality.) It was indeed constituted in certain countries (England before the eleventh century, Poland, Hungary) with the features just described but without any feudal character; and for a long time there remained, even in the most strongly feudal countries, not only tenants but knights that were strangers to all feudal relationship.

(However, the warriors of the middle ages did not live independent of each other.) As early as the capitularies of Charlemagne we see some who were attached, probably for life, to a chief who led them to war. The chief was already called seigneur, the men vassals (which seems to have meant servants). These names were to go down through the middle ages. The seigneur was always a rich personage, a dignitary or a great landowner. He equipped, fed, kept, perhaps even paid, a troop of knights and squires who served him as social companions and as body-guards.¹ The seigneur and his men lived together in the same hall, ate together, and went on expeditions together. The vassal was really a servant: he waited on his seigneur at table; he had to obey him and to follow him everywhere; in battle it was his duty to give up his life to protect him. But this position of servant was mingled with a sentiment of comradeship which, without effacing distances, created a close relation of mutual devotion; a relation which was symbolized

¹ In the *chansons de geste* this troop is called the *maisnie* (household) of the seigneur

by the oath the vassal took on entering the service of the seigneur.

This régime, to which the documents of the ninth century allude, is also that which the *chansons de geste* describe, although much later (twelfth and thirteenth centuries). Whether it still existed in the tenth and eleventh centuries we can neither affirm nor deny; the warriors did not write much, and the acts—if there ever were any—of the noble lay families have not come down to us. Consequently the origin of feudality has remained a matter for inconclusive discussions. One thing seems certain, that from the tenth century it was an established usage in France to pay the vassal no longer in money or produce, but by giving him a domain—a domain provided with tenants. This was not a new kind of gift; it was the *beneficium*. No other name is employed in the Latin acts, in Germany and in Italy, down to the end of the eleventh century. In France appears the word *fevum* or *feodum* (fief); the first examples known to be authentic are from the beginning of the tenth century. In eastern France the domain given by the seigneur was called a *chisement* (*casamentum*, an establishment). Thereafter the vassal, instead of remaining near his seigneur, established himself upon the domain he had received; but he continued to be his man. It is not proved that every vassal necessarily received a fief, even in the twelfth century. But at least no one could receive a fief without becoming the vassal of him who gave it, and (almost all vassals received a fief.)

(As in the time of Charlemagne the vassal bound himself to the seigneur by a solemn act,) for one was not born

a vassal; he became one, and he had to become one to be able to enjoy the fief. This is why the ceremony creating vassalage was preserved through the centuries: it served to declare the right of the seigneur. The old ceremonial seems to have been very much the same in all countries. The future vassal presented himself before his seigneur to be, bareheaded and without arms. He knelt before him, put his hands in the hands of the seigneur and declared himself his man. The seigneur kissed him on the mouth and lifted him to his feet. Such was the ceremony of homage. It was accompanied by an oath: the vassal swore, with his hand upon relics or upon the Bible, to remain faithful to the seigneur; that is to say, to fulfil the duties of a vassal. This was the act of fidelity, or fealty. (Homage and fealty were two distinct acts: the one was an engagement, the other an oath; but as there never was homage without fealty, the two were finally confounded.)

(As a recompense for this engagement, the seigneur ceded to the vassal the possession of a fief which belonged to him: this was ordinarily a piece of land; it could be any sort of object or lucrative privilege. The seigneur transferred his right by a solémn act: he put the vassal in possession of the fief by giving him a bit of straw, or a stick, or a lance, or a glove, which symbolized the object transferred. This was called investiture (invest signified to put in possession of). What the seigneur transferred was not the ownership of the fief, but only the usufruct; legally he remained owner. The contract bound only the contracting parties and was valid only during their life. At the death of the vassal, the fief reverted to the seign-

eur; at the death of the seigneur, the vassal could keep the fief only by engaging himself anew to the new seigneur.

It seems that at first the seigneur, on the death of the vassal, made use of his right to take back the fief in order to give it to whomever he pleased. The heroes of the *chansons de geste* often proceeded in this manner, and we find examples of life fiefs even in the twelfth century. But the custom that the son should enter into the condition of his father was so strong in the middle ages that the seigneurs resigned themselves to allowing their vassals to bequeath their condition to their sons. Thus the hereditary of fiefs was established; or to speak more exactly, what became hereditary was the right of contracting vassalship toward the seigneur of the fief. The fief itself never became hereditary, since the seigneur remained its legal owner; the contract for the usufruct never ceased to be for life: it had to be renewed with each generation of vassals, with each generation of seigneur. It was merely the right to renew this contract that became hereditary; but in practice this was equivalent to hereditary possession. This evolution was already almost accomplished, in France, at the end of the tenth century; it was confirmed, in Lombardy, by an edict of King Conrad II, in 1037; it was prolonged, in Germany, into the thirteenth century.

Feudal Obligations.—The fief was not given gratuitously. It imposed upon the vassal certain obligations toward the seigneur. These obligations always rested upon the same general conception, formulated everywhere and at all times in the same terms; the applications alone varied.

Above all, the vassal owed homage and fealty, the formal act by which he avowed himself the man of the seigneur and swore fidelity to him. This he owed on taking possession of the fief; he also owed it each time the seigneur was replaced by another: it was called taking up the fief. If he refused the ceremony he disavowed the seigneur, and by that lost his right to the fief (he was said to forfeit). He must declare to the seigneur for what fief he became his man: this was the avowal of fief. If the fief was composed of several objects, he must enumerate them all. If there was doubt as to what the fief included, he owed the seigneur a showing (or view), which amounted to a descent upon the place. If through bad faith he concealed a part of the fief, he lost his right to all of it. These oral formalities were replaced, especially after the thirteenth century, by a written enumeration, called avowal and enumeration of fief.

(On taking up the fief, the vassal accepted the negative obligations of a usufructuary toward the owner.) He pledged himself (often by an express formula) to maintain and guarantee the fief: to maintain it, that is to say, not to let it lose its value, not to change its condition, not to take away a part of it (or, as they said, abridge it); to guarantee it, that is to say, to be ready always to recognize the right of the owner and to defend it against third parties.

(On swearing fidelity, the vassal pledged himself to do the seigneur no wrong, to attack neither his person, nor his goods, nor his honor, nor his family.) Acts of homage are often found in which the vassal swore to respect "the

life and limbs" of the seigneur. These negative obligations seem to have been reciprocal. "The sire", says Beaumanoir, "owes faith and loyalty to his man as much as the man to his seigneur." (The seigneur and the vassal owed each other mutual affection.) Neither permitted himself any hostile act toward the other. The seigneur, then, should not attack nor insult his vassal, nor seduce his wife or daughter. If he did, the vassal could release himself from his seigneur and at the same time keep the fief. The rupture was marked by an act which was the contrary of investiture; the vassal threw down the straw or the glove: this was the *defy* (breaking of faith).

The positive duties of the vassal were sometimes included in a single word, service; sometimes analyzed in a formula which appears as early as the tenth century: aid and counsel (*auxilium* and *consilium*).

Aid was above all military: (the vassal was the soldier of the seigneur;) he must aid him in his wars; it was for that indeed that he received his fief. Certain formulas for swearing homage even say it expressly: the vassal swore to serve the seigneur "against all men and women who may be alive or dead." This obligation, doubtless unlimited at first (it still appears so in the *chansons de geste*), grew to be specific as well as limited, and several services came to be distinguished: *ost* and *chevauchée*¹ was the obligation to accompany the seigneur, either on his expeditions (*ost*), or on his incursions into hostile territory (*chevauchée*). (This service, especially in the thirteenth century, was reduced as to distance and as to duration) the vassal did not follow the seigneur (at

[¹ In the Latin, *exercitus*, or *hostis*, and *cavalcata*, or *expeditio*, *equitatio*, *equitatus*.]

least at his own expense) save within certain limits, often a very small region; he served him only up to the time fixed by custom, usually forty days. *Estage*¹ was the obligation to do garrison duty in the castle of the seigneur, sometimes alone, sometimes with his family. Also the vassal was under the obligation to place his own castle at the disposition of the seigneur when he demanded it; for this reason his castle was said to be swearable and surrenderable,² and it was often stipulated, especially in the thirteenth century, that the vassal must give it up to the seigneur "either when he was peaceably disposed or when he was in anger, when he had a great or a small force." The seigneur could put a garrison in the castle; but he must give it back in the condition in which he received it, and seize nothing in it except "straw and hay."

(Aid was also, though accessorially, a subvention in produce or in money, due by the vassal in certain fixed cases.) Ordinarily the vassal on receiving investiture made a gift, which was regulated by custom. Often it was some object symbolizing vassalage: a lance, a gold or silver spur, a pair of gloves; about Orleans it was a horse, the *roncin de service*; in Guienne, a sum of money, the *sporla*. Ordinarily at each change of vassal and sometimes at each change of seigneur, there was due the seigneur an indemnity (the *relief* or *rachat*), which was very heavy in the north of France (one year's revenue) and heavier still when the new vassal was only a collateral heir of his predecessor. Likewise if the vassal sold his

[¹ In the Latin, *stagium*.]

[² In the Latin, *jurabile et reddibile*; that is, to be sworn into service and given up.]

fief, the purchaser must have the transfer approved by the seigneur and must pay him a right of sale (the *quint*), which sometimes amounted to three years' revenue.

(The seigneur had the right to make his vassals contribute to some of his exceptional expenses. This was also aid, called in certain regions aid in four cases. These cases varied from one region to another; sometimes indeed there were more or less than four. The most usual were the ransom of the seigneur if he was made prisoner, his departure for a crusade, the marriage of his daughter, the knighting of his son. Such aid was due from the vassals who were nobles, but they did not pay it with their own money; they levied it upon the tenants of their domain.)

The seigneur could require his vassal to entertain him, together with his escort or his hunting equipage: this was the right of *gîte*¹ (*alberga* in the south of France). It was often replaced by an indemnity. Also, in the thirteenth century, it was strictly defined. Thus, in Guienne, the possessor of Sommières must serve to his seigneur, the duke of Aquitaine, when he came, a repast for himself and ten knights; the repast to consist of pork, beef, cabbage, roast chickens and mustard. He himself must wait on the duke in scarlet leggins with spurs of gold. Another vassal had to receive six of the hunters accompanying the duke, give them bread, wine, and meat, and lead them into the forest the following day.

Counsel, or court service, obliged the vassal to go to the seigneur and advise with him in perplexing matters.

[¹ In the Latin, *gistum*.]

The seigneur called all his vassals to his court at the same time. The obligation to comply with such calls was often limited to three assemblies, held ordinarily at the time of the great feast-days: Easter, Pentecost, Christmas. The assembly of vassals formed an attendance of honor for the feasts given by the seigneur on the occasion of his marriage, or of that of his children, and of the entry of his sons into knighthood; it satisfied his vanity by enhancing the show of the ceremony. It served as a political council in grave affairs of interest to the seignury, such as war, peace, or the changing of customs. It served as a tribunal (*placitum*) to adjust differences between the vassals of the seigneur; the seigneur convoked and presided over the court, and the court pronounced sentence. To judge in the vassals' courts was not a right, but an obligation which brought no reward and which might draw the judger into a duel with the loser. Also it was a strict obligation: neither could the vassal refuse to sit, nor could the seigneur refuse to convoke the court. This would be a "default of right" (denial of justice) which would release the vassal from his oath of fidelity.

Women and Children in the Feudal Régime.—It seemed that there was no room in feudality either for women or for children, since the contract of vassalage could bind only warriors. But the influence of property and of inheritance was stronger than logic; the seigneur was even more a landowner than head of a group. (A child or a woman could inherit a great domain that was distributed in fiefs to vassals, and thus become the seigneur of these vassals.)

The minor not being able to exercise his right him-

self, the nearest relative on the paternal side took the *bail*, that is to say, possession of the domain. He received the revenues and occupied the place of the seigneur; he even bore the title. At first also he was charged with the ward of the minor, and with his education. But, as under this arrangement the holder of the *bail* was also the child's heir and so subject to the temptation to gain possession of the inheritance, the usage was established of giving the ward of the minor to the nearest relative on the maternal side, who would have no interest in his death. On arriving at his majority (from fourteen to twenty-one, according to the region), the young man had himself made a knight and received then the homage of the vassals. The daughter inheriting a seigneurie, if she was of age, exercised the seigneurial rights attached to the possession of the domain; the vassals owed her homage and service. There are examples of women who governed their seigneurie in person, presided over their feudal court, and even fought. The feudal language had no terms to designate the woman seigneur; she was called by a Latin name, *dame* (*domina*, mistress); in Spanish, *Doña*.

(Women and children had entered feudality as heirs of seigneurs; they also entered it as heirs of vassals.) When a vassal died leaving sons who were minors, the seigneur originally had the right to take back the fief in order to give it to a man capable of rendering service; but from the eleventh century he only took it, with the ward of the child, to the end of the minority (this was seigneurial *bail*, which was later replaced by the *bail* of the relatives of the minor). On arriving at his majority, the young

man entered into possession of the fief. The right of daughters was established with more difficulty. A woman could not acquit herself of the services of the fief. Consequently there were countries where fiefs were not transmitted to daughters: they passed to the son, even if he was younger, or to more distant relatives. But the habit of treating daughters as heirs was so strong, especially in the south of France, that finally, in the eleventh and twelfth centuries, it applied even to fiefs. Women received them as inheritances, even as dowries; they became vassals, as they could become seigneurs. Of the early exclusion there remained only a privilege in favor of male collateral heirs.

(For the service of the fief the woman had to furnish a substitute.) For her marriage she was in law bound to secure the consent of the seigneur, and, in certain countries (in Spain, at Jerusalem), the seigneur presented to the heiress of a fief two or three knights between whom she had to choose her husband.)

The Clergy in the Feudal Régime.—The clergy kept its old organization, which was based upon a hierarchy of dignities and absolute obedience of inferiors to superiors. Even in the epochs of greatest confusion, when the “spirit of the time” had most profoundly penetrated the clergy, the church never adopted a feudal principle into its organization; never did an inferior do homage to a superior or receive his function as a fief. (The clerics, like the women, should remain strangers to feudality,) since the religious law forbade them to bear arms. And nevertheless, like women, the clergy entered into the feudal régime, at least the higher clergy. As for the

lower clergy, the parish priests, servitors of their bishop or of the patron of their church, and the monks, subordinated to their abbot, remained in close and uncontrolled subjection, similar to the dependence of tenants upon their seigneur.

The higher clergy possessed great domains arising from donations that had accumulated through centuries; for in all the Christian countries the lay landholders sought to gain the favor of the saint who was patron of this church or of that abbey, in order that he might intercede for them in heaven. They consequently donated—and especially bequeathed—to the saint or to his church, “for the redemption of their sins” or “for the salvation of their soul”, a part of their “earthly goods”, often some pieces of land, sometimes entire villages. There was not a bishopric, an abbey, a chapter of canons or a collegiate church that had not thus become a great landholder. Bishops, abbots and canons, thanks to the revenues of these domains, found themselves in the position of rich seigneurs. Like the lay seigneurs they had to have an escort of soldiers, for their honor and defence; wherefore they distributed a part of the domain of the church in fiefs and acquired vassals who owed them homage and service.

From the time of Charlemagne the prelates (bishops and abbots), being considered as high officials, owed homage to the king and were obliged to lead their men to the army. This custom was preserved in the north of the kingdom of France, and was so strongly established in the kingdom of Germany that the prelates came to consider their ecclesiastical dignity itself as a fief which

they held from the king; the king invested them with it by giving to them a standard, as he did to the lay seigneurs.

(The prelates thus formed a superior class which was part of the high feudal nobility.) In all Christian countries, the clergy, being celibate, could not be recruited by heredity; but rarely was any but a cleric of noble birth chosen to be bishop or abbot. The ecclesiastical dignities thus served to provide for the younger sons of noble families. Many kept the habits of their youth after taking orders; they remained hunters, drinkers and warriors, like that archbishop of Mainz who, in order to avoid shedding blood, fought with a club. In general, all that the clergy could obtain from these sons of warriors was to prevent them from arming as knights.

The convents had need of defence against the knights of their neighborhood, who did not always allow themselves to be intimidated by excommunication. Many made an agreement with some seigneur who took it upon himself to defend them in return for redevances to be levied upon their tenants; he was called the guardian or advocate (*advocatus*); in German, *Voigt*. The institution goes back to the Carolingians. Ordinarily the advocate burdened, rather than defended, the domain; the acts of convents are often full of complaints against the advocates. The bishoprics sometimes had a lay defender of this kind, the vidame (vice-seigneur).

★ **The "Ministeriales."**—(The richest seigneurs—kings, princes and prelates—kept about them a troop of armed servants.) They were called in Latin *ministeriales*, servitors (*ministerium* signified service, function); in

German, *Dienstmannen* (men for service). But serving a great seigneur was an honorable occupation, which made of these servants a class intermediate between the nobles and the people; and the household of a great seigneur formed a complete little society, in which the services much resembled public functions.

(The *ministeriales* had charge of the household offices; they directed the services into which the care of the house was divided.) There were always at least four of these offices at a court:¹ the table, directed by the *dapifer* (seneschal, *Truchsess*); the cellar, directed by the *buticularius* (cup-bearer, *Schenk*); the stable and forage by the *comes stabuli* (constable, *Marschalk*); the chamber (dress and provisions), entrusted to the *camerarius* (chamberlain, *Kämmerer*). Other great officers found at the richest courts were the first huntsman, the forester, and the master of the kitchens. Besides, (the artisans of the seigneur—tailors, shoemakers, armorers, bakers, and so on—were grouped, according to their kind of work, into *ministeria* (trades), and each trade had a *ministerialis* at its head.) At the same time the *ministeriales* performed the duties of knights: they escorted their master, accompanied him to war, and guarded his castles.

The institution languished in France, where the *ministeriales* were soon confounded with the vassals. In Germany, on the contrary, down to the end of the thirteenth century, the *Dienstmannen* formed an important class; they were the strength of the king and of the prelates. (They kept the mark of their origin (their

¹ These four offices are mentioned from the ninth century.

ancestors had been chosen among the serfs of the master). Even become knights,) they still remained serfs; they were called *unfreie Ritter* (unfree knights), and in acts they signed after the free men. They could not acquire, nor sell, nor bequeath, nor marry without the consent of their master; they were subject to rights of mortmain, like serfs. (Those of the same master formed a closed society.) They wore garments of the same color (the master's color); they married among themselves; they were not to fight against each other; they must have all their differences judged by the master's domestic tribunal, which was made up of their companions and which judged according to the particular usages of the master's court (*Hofrecht*). They did not have the right to present themselves at the tribunal of the free men, where judgment was governed by the law of the country (*Landrecht*). Also their condition had become hereditary: the master could no longer plunge their children back into servitude; he had to keep them at his court, give them an office or support them.

(Little by little the seigneur drew the offices away from the *Dienstmannen*, who became exclusively knights.) He accustomed himself to giving each of them a benefice, that is to say, the usufruct of a domain. Then, toward the end of the thirteenth century, benefices became confounded with fiefs and the *Dienstmannen* were like vassals. Those of the king even took the title of *Freiherr* (free seigneur), equivalent to baron. But before this time the *Dienstmannen* grouped about the princes had developed at the German courts a knightly society that was accustomed to conform to scrupulously exact rules

of conduct. These constituted what were called court manners, *courtoisie* (*höfische Sitte*). The most original trait in these manners was the respect for ladies, for the wives of the seigneurs; it resembles much the respect of the servant for the mistress, since it was not extended to the simple wives of the *Dienstmannen*. It was addressed to rank, not to sex.¹

Complication of Feudal Relations.—The original relations between knights rested upon “fealty”, the reciprocal devotion of the seigneur and his men. They could subsist only in a rudimentary society made up of groups isolated from one another, each consisting of a seigneur and his vassals. It was necessary to be personally devoted to one’s seigneur and vassal to him alone; the essential thing was vassalage. (But this régime was thrown into confusion by the creation of hereditary fiefs.) Devotion gave place to a contract. The vassal, thanks to the fief, became materially independent of the seigneur, detached himself from him, and began to consider the fief as the essential, vassalage as a charge accessory to the fief, an onerous burden which he labored to diminish by replacing general fidelity with special services. The fief, become hereditary, passed into the hands of strangers who were indifferent to the seigneur and became his vassals only to preserve the fief.)

It happened then that the same noble came to be at the same time the vassal of several seigneurs. He could not

¹ The origin of gallantry is a very obscure question. It was unknown to the composers of the *chansons de geste*. It appears, much mingled with sensuality, in the poetry of the troubadours of the south of France and in the poems of the Gallic cycle in the twelfth century. From France it penetrated into the German poems. It is also found among the Moors of Spain, but with a sentiment of compassion for the weak sex, which appears foreign to the gallantry of the French middle ages.

serve them all, especially if they made war upon each other. It was therefore necessary to introduce reserves: on taking up his fief the vassal reserved his duties toward the seigneur he had already; he swore to serve the new seigneur, "except for the fidelity due to N. and N.," or to serve him "against all except N. and N." In place of absolute devotion, there were only conditional devotions. In the twelfth century, there came to be a distinction made between liege hom age, which bound the vassal to unlimited service, and plain homage, which the vassal gave standing and armed and which bound him to only a limited service.

(The fief soon lost its character as an establishment given to a faithful supporter by way of recompense. Not only lands, or functions (as with the *ministeriales*), were given in fief, but all sorts of lucrative rights: redevances, rights of banality, of justice, of market, of tithe, and so on even to the right of taking the swarms of bees that might be found in the woods. Even money pensions came to be given. All these objects and rights were divided and accorded in portions: the half of a domain was given in fief, a room in a castle, a part of an enclosing wall, a quarter of the justice.¹

(Homage, being no longer an absolute promise of devotion but simply a contract, became an habitual process of establishing a bond between two nobles.) An allodial seigneur made himself the vassal of another seigneur; by a fiction he ceded him his domain; the other, become the legal proprietor, gave him back this same domain as a fief and received the man as a vassal: this was called

¹ I have found in Burgandy "the third part of the half of two parts of the tithe of N."

“taking back a freehold in fief.” The practice was not new, but in becoming general it established between the seigneurs a gradation of nominal dependencies. Inversely, the vassal gave a portion of his fief in fief to other nobles (the elder brother to his younger brothers). In this way rear vassals sprang up, who in their turn could have vassals. In strict law, the consent of the seigneur was necessary for these sub-infeudations, for they diminished the value of his fief. The old Carolingian functionaries, the dukes and counts, become vassals of the king because of the transformation of their functions into fiefs, found vassals for themselves in the principal seigneurs of their province. (Thus was created a very complicated network of feudal bonds, reaching from the king down to the squires who were possessors of a little fief.)

This complication was doubtless almost as old as the feudal régime, for we find the superposition of fiefs and the reserve of fidelity in the oldest detailed document in which the word fief appears, an act of 954, in barbaric Latin mixed with Catalan words: “I, Raymond, viscount of Cerdagne, I concede to you, Peter Raymond, viscount of Urgel, and his wife Sibyl, the castle of Saint Martin; and I give you Ermengaud with the fief that he holds from the castle of Saint Martin, and with its knights. Likewise I accord you the castle of Mirales and Cheralt; and I give you Berengar of Aragal with the fief that he holds from the viscounty and its knights.

. . . And for this gift, I, Peter Raymond, and my wife Sibyl, I recognize that we are yours firmly against all men and women, except the count of Urgel, that we will

aid thee from our domain and with our counsel to hold, guarantee and defend against all men and women, by straight faith without fraud.”

(It is this network of feudal bonds which has been called the “feudal hierarchy.”) The name is improper; it would assume a series of fiefs and vassals, occupying all the territory, and regularly superposed in grades one above the other as in a hierarchy of functionaries. This is the régime which the authors of the Assizes of Jerusalem¹ seem to describe. Perhaps it really did exist in the kingdom of Jerusalem, where the knights, who had come as conquerors, were able to create a regular organization based upon a general principle. Nothing like this is found in any country of Europe.

In Germany, where they felt the need of classifying the knights who accompanied the king on his expeditions into Italy, an attempt was made to range the nobles in categories, called bucklers. In the first was the king alone; in the second, the princes of the church who were vassals of the king; in the third, the lay princes, thrown into this rank because they held fiefs from the princes of the church; in the fourth, the barons, and even the counts when they were vassals of a lay prince; in the fifth, the free knights who were vassals of a baron; in the sixth and last, the *Dienstmannen*. Each rank was sharply distinguished; no one could be in two bucklers at the same time. The noble who became the vassal of his equal passed into an inferior rank; a prince, on becoming the vassal of another, went down to the rank of baron.

It seems that in Germany homage had best preserved

¹ This is where the old feudists sought the picture of the feudal organization.

its original meaning. In France the nobles knew nothing of this hierarchy. The feudal bond had ceased there to establish a relation of superiority of the seigneur to the vassal. As early as the eleventh century, the count of Anjou, having conquered the count of Blois, despoiled him of his county of Touraine and had it given to him in fief by his prisoner (whose vassal he thus became). In France any one could be at the same time both seigneur and vassal. The feudal bond united only lands.

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III

USAGES AND GOVERNMENT

Allods, Fiefs and Tenures.—The most apparent characteristic of the feudal régime, that which has given it its name, was the way of possessing land.¹

The normal mode of possession down to the ninth century had been the allod, fully-owned property with no condition and with absolute right of alienation. But from the time the landlords distributed their lands, in tenures to peasants, in fiefs to knights, there were three modes of possession: the allod; the fief, usufruct on condition of noble service;¹ and the tenure (censive, villain, or servile), usufruct on condition of the payment of redevances. Following the custom of the middle ages these possessions became hereditary, and there were three sorts of inheritance. These rights of possession could exist together, superimposed upon each other: a given land was at the same time possessed as censive, as fief, as allod, by three different owners,²—without counting the hereditary intendant, who also held certain irrevocable rights over it. In this sense it is inexact to speak of allods, fiefs, and censives; we should say possessions *in* allodium, *in* fief, *in* censive. But finally the condition of the possessor became attached to the land,

¹ During the whole of the middle ages, one finds examples of not-noble fiefs; and it is not proved even that the fief may not have begun by being a not-noble tenure. Here it is a question only of the most general usage.

² There were besides several superposed rights of fief, every time (and this was the usual case) that there were several grades of feudatories.

in such a way that each estate took on an indelible quality which was imposed upon new possessors. These lands were then called censives, villainages, fiefs, allods¹; and as the fief could only be held by nobles, a distinction came to be made between noble and not-noble lands. (The not-noble lands were the tenures of the villains; the noble lands were the reserves exploited by the noble possessors of fiefs or allods.) A noble, on acquiring a censive, no longer made noble land of it; a villain, in possessing a fief (when the custom permitted), did not take away its quality of noble land.

(An allod could be converted into a fief by the owner);² a fief could with difficulty be converted into an allod. Consequently allods became more and more rare. They finally (in the thirteenth century) became so rare, especially in the north of France, that the allod was considered an exceptional and improbable method of ownership. It was sometimes called free allod, and was said to owe nothing to any one and to be held from God alone;³ but its existence was admitted only on formal proofs, for the presumption was that all land was either a fief or a tenure: "No land without a seigneur." In England the juriconsults said there was only one owner, the king. In the south of France allods survived in much larger numbers. When the king of England, in 1273, took a census of his duchy of Guienne, many nobles declared that they owed nothing to any one, or even that they did not have to answer the questions of the duke.

¹ The language of the middle ages, which was not rigorous, sometimes applied the name allod to fiefs, to indicate either that they were hereditary or that they were subject to slight charges.

² See above, p. 66.

³ The famous "king of Yvetot" was simply an allodialary.

Law of Inheritance.—Land was transmitted according to two opposed systems of inheritance. By the old régime, common to the Roman law and to Germanic usages, property was divided equally among the children, without distinction of sex. This rule was continued for allods, noble or not-noble, and was extended to all not-noble lands (these were encumbered by charges, but the inheritor, whoever he might be, could acquit them). When there were no children, a distinction was made between own possessions—the family inheritance—which should return to the branch from which they came, and the acquired possessions, which the owner could dispose of as he liked. Such was the *customary law*.

For the inheritance of fiefs, on the other hand, the right of the heirs was thwarted by the right of the seigneur. In rigorous logic, the fief should be indivisible and its possessor should be capable of service: it passed undivided to the eldest male heir; the *feudal law* was characterized by primogeniture and the exclusion of women.) But the principle yielded—more or less according to the region—before the general custom: the younger sons were allowed to share with the eldest (this was parage), the daughters to inherit in default of sons. There merely remained a larger portion for the eldest son and the preference of male over female heirs of the same degree.

Wars and Tournays.—(Every noble was a warrior) Unless he was bound by some special agreement he had the right to make war upon whomsoever he would.¹ (Thus

¹ On the origins (probably Germanic) of the right of war, already recognized in the Capitularies, see vol. I of the *Histoire Générale*, in chapter vii.

(it was that in the oaths of fidelity the contracting parties promised to respect each other's "life and limbs.") This condition (which we improperly call private warfare) was the common law. At the most, it was considered a duty to begin it only after a formal declaration.

War was declared by sending a symbol to one's enemy, ordinarily a glove: this was the sign that faith was broken (the challenge). Sometimes a threat was sufficient, or they even began actual violence forthwith. The families of the two adversaries were by law drawn into the war, for relatives as far as the seventh degree owed each other aid. In the thirteenth century, Beaumanoir queries whether there can be war between two brothers: no, he concludes, if they have the same father and the same mother, since then both have the same lineage; yes, if they have only one common parent, for then each will have his family for him. Those who had vassals convoked them for service, and the campaign began.

The feudal wars read very monotonously.¹ (Mounted warriors fell upon the domain of the enemy, carried away flocks, cut down trees, burned harvests, set fire to villages, maltreated and sometimes massacred the peasants. The object was to take the castles and the persons of the adversaries.) This was done either by surprise or by regular operations: a battle or a siege. For siege² purposes they employed antique machines, perfected in the Orient. A battle was a contest between two

¹ The most lively descriptions are those of the *chansons de geste*, particularly *Garin le Loherain*.

² A detailed description of a siege (that of Château-Gaillard) can be found in Viollet-le-Duc, *Dictionnaire d'Architecture*, under the words *SIÈGE* and *CHÂTEAU*.

masses of knights thrown against each other at full trot; the chief aim was to unsaddle the adversary and hurl him to the ground; the squires, who remained behind the combatants, then rushed up to seize the unsaddled opponents and take possession of their horses. The prisoners, despoiled of their arms, were led away, usually tied on a horse. The victor kept them in his castle, often in chains or even locked in an underground cell, until they bought their freedom at the price set (the ransom). Castles also were ransomed.

(War became an amusement and a trade.) The game was not as dangerous as it seems. Orderic Vital, in telling of the battle of Brémule (1119), adds: "Of the nine hundred knights that fought, I know that only three were killed; in fact, they were entirely covered with iron and . . . they mutually spared each other, seeking less to kill than to take each other captive." (In default of wars the knights arranged a tourney. They formed two troops, which met in the open field and, sometimes with the usual arms, fought a battle as dangerous as real battles; in the tourney at Neuss (near Cologne), in 1240, sixty knights perished. In tourneys also prisoners were taken and ransomed. The business of ransoms was so lucrative that many knights, even seigneurs, extended their operations outside of the warrior society, upon merchants, bourgeois, and even clerics. They stopped them in the highways, made them prisoners, and tortured them, in order to secure a ransom. The Germans called these adventurers *Raubritter* (robber-knights).

Peace and Truce of God; Peace of the King.—This warlike régime was agreeable only to the knights; it

weighed upon the rest of the population. But since war was the common law, to have it stopped there had to be a special act, a peace, and to impose that peace a power capable of making it respected.

(From the end of the tenth century, the church tried to establish peace by pledging the knights to cease making war. The attempt began in the south of France by a series of provincial synods. At first it was a question of protecting defenceless people, peasants, monks, ecclesiastics; whoever attacked them was to be excommunicated: this was the Peace of God.)

The Council of Toulouges (1041) went farther. (It ordered that all wars be suspended during feast-days and Sundays, during Advent and Lent, and the second half of each week) this was the Truce of God.) It was confirmed and extended to all Christian countries by the Council of Clermont (1095), which decreed the first crusade. This truce should have procured about two hundred and forty days' peace every year and reduced war to one hundred and twenty days, but it does not appear that it was strictly observed.

To apply the decisions of the councils there was created, in the eleventh century, for each diocese (at least in a part of France), a peace association directed by the bishop. It had its treasury, its tribunal, and even its peace army, formed chiefly of parishioners organized as militia and led by the parish priests. Of all these creations (to which scholars have given much attention) we find scarcely a trace at the end of the twelfth century. (In countries where the prince was very strong, he proclaimed peace and threatened with heavy fines or even

with death whosoever should infringe it.) Thus the peace of the duke reigned in Normandy, and the Norman princes established the same régime in England and in the Two Sicilies. The count of Barcelona made his peace respected in Catalonia, the count of Flanders in Flanders. In Germany, several emperors proclaimed the peace of the king, called also the peace of the land (*Landfrieden*); Frederic Barbarossa caused an act of peace (*Friedenbrief*) to be drawn up; but these peaces encountered habits that grew more and more inveterate, and war became the common law of Germany. As for the king of France, he was too weak to impose peace in his own domain, to say nothing of the rest of the country. Even Philip the Fair confined himself to forbidding wars and tourneys while he should be at war himself. Peace, in the middle ages, was an exceptional state.

Justice.—Feudal society was not acquainted with justice that was the same for all. Justice, like peace, was not a common right; in the middle ages it was a privilege. There was a different justice and special courts for each class. } The cleric was amenable to the courts of the church, the bourgeois to the tribunal of the town. } Free men should go to the tribunal of the country, presided over by the count; but such assemblies ceased to be held in France from the tenth century, and in Germany, where they were kept up till the thirteenth century, their action became more and more restricted. Public tribunals were replaced by private tribunals: the tenant was judged in the seigneur's court,¹ a domestic tribunal kept

¹ On the character of the seigneurial tribunal, see above, pp. 24–27; on the feudal court, see above, p. 55.

by the intendant; the noble vassal, in the feudal court formed by an assembly of his peers. Custom, however, produced some rules which were common to all the lay courts.

The procedure of the middle ages rested upon a conception opposed to that of the Roman law, which continued to be applied in the courts of the church. Roman justice was rendered sovereignly by the judge, in the name of society, in a public interest: the judge had to prosecute crimes and arrest suspects; before pronouncing sentence, he had to get light on the matter by gathering information, especially written proofs; he had to judge according to reason. (The justice of the middle ages was rendered by the court, made up from the people of the region)(in the feudal courts it was the peers, the equals of the parties, who were the judges); the president had no other rôle than that of directing the court and pronouncing sentence.¹

(The court did not act in the public interest: it rendered a service to the parties; the plaintiff must make a request for this service) Even in the matter of crimes, the court intervened only on the demand of the victim or of his relatives, and the criminal trial took the form of a process between the accuser and the accused. Both had to be treated equally: both were imprisoned, and the plaintiff who lost incurred the same penalty that otherwise the defendant would have had to undergo; for the accused was the equal of the accuser.

The court did not have to enlighten itself on the real

¹ It cannot be said that the intendant, in the tribunals for tenants, always limited himself to this rôle, at least in France. Judgment by the tenants appears to have been the custom in Germany in the thirteenth century.

truth of the affair, to seek out just how it had come about: it decided only on what the parties presented to it; it must judge not according to equity and reason, but according to the forms established by custom. (Justice was formalistic, like a strictly regulated game; the judges had only to maintain the rules, judge the throws, and proclaim the winner.) Every trial consisted of several sacramental acts accompanied by consecrated phrases, which followed each other like the scenes of a drama. The petitioner (or accuser) asked for a day for the trial. When the day came the petitioner set forth his complaint and swore to it. The defendant immediately replied, word by word, and took oath. The witnesses swore in their turn. Then came the call, that is to say, the provocation; next the duel; and finally, the sentence. A word or a movement that was contrary to the rules sufficed to condemn a suitor.¹ At Lille, whoever during the oath moved his hand, which rested upon the Bible, lost his case. Particular care had to be taken with the words by which the procedure was begun, for they decided on what ground the trial was to proceed. Whence the proverb: "A word once spoken cannot be recalled."²

In criminal matters, the oath of two witnesses brought condemnation upon the accused. The accused might allow the first witness to swear, but at the moment when the second knelt down and stretched out his hand to swear he must declare that he challenged him as a false witness and a perjurer.

¹ The compiler of the custom of Normandy compares this procedure with the game "Now up, Bernard!" in which the player must rise at the call of his name, under penalty of having his face daubed with charcoal.

² The rigor of this procedure was softened by allowing the suitor to have counsel and to reserve the right of changing his words.

A case might be decided by proofs, by oaths, by battle, or by the Judgment of God. Proof was the ancient Roman procedure; the oath was the barbaric procedure. The *Usages of the County of Barcelona* distinguishes them very clearly: "Proof is given by witnesses, or by written testimony, or by reasons, or by judgments. The oath is not a proof; but, in default of proof, the defendant or the plaintiff, whichever one the judge believes the more truthful and the more afraid to perjure, is put to death." Proof demanded attention on the part of the judges, and the nobles regarded it as an insult to have their affirmation questioned. Consequently the court ordinarily preferred to remit its decision to the Judgment of God (ordeal) or to the duel.

The Ordeal.—The ordeal was an ancient barbaric process which was accepted by the church. It was applied to parties that were not able to fight; especially to women, sometimes to peasants.) Several of the tests employed in the ninth century (water, the cross, the morsel of bread) had passed out of use. The usual process, in the eleventh and twelfth centuries, was that by fire, under two forms: the defendant plunged his hand into a kettle of boiling water, or he carried red-hot irons in his hand. This iron was called *juice* (from *judicium*, judgment). The hand was wrapped up, then after a few days it was uncovered; if it was unimpaired, the patient had won. The church, which had regularized the Judgment of God, finally abolished it (at the Council of 1215).

The Duel.—For men, (for all the nobles at least, the normal issue of the trial was the duel,) (the appeal by battle.) The defendant (the accused), instead of exculpat-

ing himself, provoked the complainant, or his witness. The trial was transformed into a war; the court had no other rôle than to regulate its conditions and declare the result.

The battle, like the rest of the procedure, consisted of a series of sacramental acts: the provocation (call) by the remission of the gage of battle, the choice of the day, measuring off the lists (ordinarily one hundred and twenty-five paces), the oath, the proclamation, the combat, the avowal by the conquered. The arms were minutely regulated: in the knights' courts they were the armor, the shield, and the sword; in the courts for the not-nobles, the shield and the staff.

(The duel was the favorite procedure with the society of the middle ages. It was employed for peasants, it was permitted to the serfs of certain domains as a privilege. The women even and the infirm could have a champion fight in their stead)

(The duel served not only in cases of crime, but in suits concerning ownership or succession.) It was even employed to decide questions of law. In the tenth century Otto I, in Germany, had two champions fight to decide whether the son should exclude grandsons who were his nephews from the succession. In the thirteenth century Alfonso of Castile had recourse to the duel to decide whether he ought to introduce Roman law into his kingdom.

The duel, in the courts of nobles, was even a means for causing a judgment to be annulled. In principle, the justice of the middle ages knew no appeal: every judgment was irrevocable; but the loser could declare the judgment false by provoking those who rendered it. If

he won in this battle, the judgment was annulled. The duel served in the same way to throw out a witness.

Confession, Penalties.—All this formalistic procedure was reserved for doubtful cases, in which the defendant denied the charge against him; a condemnation was only obtained with great difficulty and at great risks to the accuser and his witnesses. The procedure was summary, on the contrary, against the delinquent taken in the act,—the testimony of those who seized him sufficed to have him condemned,—summary also against the delinquent who confessed his crime, especially if he was a stranger or vagabond. The temptation was therefore strong for the judge to urge the accused to confess by subjecting him to torture. And thus the *question* was to become, at the end of the fifteenth century, a general custom.¹

The penalty was rigorously prescribed by custom, at least in the not-noble courts. The homicide was beheaded, the thief hanged, the murderer (assassin) was dragged on the hurdle and hanged. Women, in place of being hanged, were buried alive. If the criminal was dead, his body was executed; if he had fled, his effigy. The suicide was treated as the murderer of himself. If an animal killed a person, it was hanged or buried alive.

Custom.—The society of the middle ages scarcely knew any other rule than custom. It had little idea of law established by a legislative power. On the very rare occasions when a prince felt the need of modifying the custom, he did it only after having convoked and consulted all the notables of the country.

¹ Procedure by inquest, which gave birth on the one hand to the English jury and on the other to the ecclesiastical inquisition, was, up to the end of the thirteenth century, only an exceptional expedient.

The custom differed from one region to another. "One would not find in the entire kingdom", says Beaumanoir, "two chatellanies that use, in every case, the same custom." It was not the same for the nobles, the bourgeois, the clerics, and the peasants; and for this it was only the more respected, for it was the private property (the privilege) of each class. It was not written, it rested upon precedents conserved in the memory of the living. When it was to be ascertained, an inquest was made and each one told what he remembered having seen done in analogous cases. For the men of the middle ages, the just was that which had always been done, "good custom"; the unjust was that which was new. Each generation strove to imitate the one preceding and only made progress unwittingly or by necessity. Out of this respect for established things came that heredity characteristic of the middle ages, which extended, beyond property, to all acquired situations; the son naturally took the place of his father.

The Chivalric Code.—In this society, immobilized by custom, (the habits of the feudal knights were a continual source of trouble.) Their lives were governed by different and mutually contradictory conceptions. The feudal (or rather vassalitic) code imposed the duty of respecting the faith sworn to one's companions, to one's seigneur, to one's vassal. Faith was the law par excellence: the loyal man (*legalis*) was the one who kept his faith; loyalty was fidelity to one's word; the honorable man, the worthy knight (*probus*), was at the same time faithful and brave. There ought to be no quarrel between men united by fidelity; and such is the idea in the

chansons de geste (*Renaud de Montauban*, where the hero, forced to combat with his seigneur, avoids doing him injury; *Raoul de Cambrai*, where Bernier remains faithful to his seigneur, Raoul, who has maltreated him). In rigorous logic, if a disagreement arose between the vassal and his seigneur, or even between the vassals of the same seigneur, they should give over judgment to the court of the seigneur, made up of peers of the vassal; and so also say the theorists of feudal law who drew up the Assizes of Jerusalem. In the name of faith, the vassal could call upon his seigneur to give him justice; the seigneur could summon his man "to come and do law", that is, to appear before his court. There, the seigneur left the judging to his men; he must "be like a balance, ready to do whatever the court decides." Thus every noble would be able to obtain justice from his peers and ought to submit himself to their justice.

But, on the other hand, the ideal of the knight was the strong and fearless warrior, the Charlemagne of the pseudo-Turpin chronicle, who "with a single blow of his sword cleaves in two, together with the horse, a mounted warrior dressed in full armor from head to foot"; who "without trouble stretches out four horseshoes at a time"; who "takes a knight in armor upon his hand and lifts him as high as his head"; who "eats at his meal the quarter of a sheep or two chickens or a goose." Such a one never draws back or has fear of anybody. He was jealous, then, of his reputation:

"Better be dead than coward be called."

And in order not to be called coward the knight was capable of every violence. His rule was honor (a new

word, unknown to the ancients), a sentiment made up of pride and vanity, which was to dominate the nobility of Europe down to the eighteenth century. [Honor obliged the knight not to endure anything which he thought could possibly be interpreted, by any one in the world, as a retraction.] In practice, it meant the duty of fighting whosoever opposed him in a right to which he pretended.

Thus honor entered into conflict with faith, and for this conflict the feudal code had no solution. It furnished the knot of the story in several *chansons de geste*,¹ and in real life adventures were not lacking like those recounted in an act of the eleventh century, in barbaric Latin: the entanglements between Hugh of Lusignan and his seigneur, William of Aquitaine.²

Feudal States.—The feudal régime did not establish between inhabitants of the same country any of the relations which seem to us indispensable for the constitution of a state. There was at that time neither public tax, nor public military service, nor public tribunals: nothing but private dues, private tribunals (landlords' courts, seigneurs' courts), and service in private wars.

The absolute independence of every landlord rich enough to be sufficient unto himself and to his men was the common law; and when the tie of vassalage was loosened the feudal seigneur became as sovereign as an allodiary. In this sense it was said in the thirteenth century, "every baron is sovereign in his barony." This is why Guizot defined the feudal régime as "the

¹ Girard de Roussillon, Garin le Loherain, Raoul de Cambrai, Renaud de Montauban.

² *Historiens de France*, vol. XI, p. 534 and fol.

confusion of property rights and sovereignty." It would be more exact to say that property rights replaced sovereignty fallen into desuetude. A seignevy was a state in miniature, with its army, its custom, its ban (ordinance of the seigneur), its tribunal, its gallows; its people called all who were not in it foreigners.

France, especially in the tenth century, was divided more than any other country into sovereignties of this kind. They have not been counted, but their number would certainly go above ten thousand. The dismemberment was less in Spain, where the Christians remained grouped around their leaders in war; less in Germany, where the king had kept some authority: there the rule was maintained that the ban (criminal justice) should not descend to the third hand, that is, below the vassals of the king. But in proportion as society became settled and civilized, isolation diminished and veritable feudal states were formed even in France.

[In every region there was one seigneur more powerful than the others,] usually the descendant of an ancient Carolingian functionary, almost always invested with an official title which had become a dignity (a duke or a count), sometimes without any title (like the sire of Bourbon, the sire of Beaujeu). He was the first personage of the country; he possessed or had acquired very extensive domains which brought him a princely revenue and made him master of several thousand tenants; almost all the territory was held in fief from him, for the other seigneurs had finally become his vassals: he thus had as vassals almost all the nobles of the province.

To these powers of landlord and seigneur were added

powers which were foreign to feudality: the control of the old towns, which assured him a revenue and a militia; the protection of churches; and often the regalian rights (rights of the crown in regard to the temporalities of vacant bishoprics, coinage, Jews, watercourses, treasure-trove). His court was the meeting-place for all that country: there the knightly fêtes were given; there was held the court of high justice which, in some provinces, became a Parlement, the tribunal of accounts, which became a Chamber of Accounts, the assembly of notables, which became the States.

These territories varied greatly in extent, according to geographical conditions and the power of the high seigneur. They were not fixed and they did not cease to change: increasing by conquests, marriages, inheritances; diminishing by divisions. Some disappeared (the duchy of Gascony, the county of Vermandois), others were created (Artois). In general they tended rather to increase in size. Finally (toward the twelfth century) the great seigneurs decided that their domain, like their dignity, should no longer be shared by their children, but should pass undivided to the eldest son. Thenceforward the feudal states were practically fixed and the framework of the provinces was formed.

This formation did not take place in the same way in all Europe. In France, where the dismemberment had been extreme in the tenth century, the feudal states took shape in the eleventh and were completed in the twelfth century; there were about forty of them. A few alone belonged to a bishop; in the majority the head was a lay prince; at first he called himself duke or count, then (in

the twelfth century) he added to this the name of his country (duke of Burgundy, count of Anjou, count of Provence). Thus the provinces were formed. Each one remained an independent state until the king of France annexed it to his domain by replacing the duke or count. In England, where the king kept the entire kingdom in his direct power, feudal states did not arise. In Spain, where the old Christian royalty had been crushed by the Mussulmans, the Christian heads of provinces did like that prince of Navarre at the end of the ninth century, of whom a chronicle says: "He proclaimed himself king in Pampeluna." Every one took the title of king, and there were as many kingdoms as there were provinces. In Italy and Germany, the dismemberment, combated by the emperor, took place later. Feudal states developed in the thirteenth century, in forms more varied than in France: in Italy because of the pope, of the Normans in Sicily, and the strength of the towns; in Germany because a part of the lands belonged to princes of the church and because among the lay princes the custom of dividing the domain among all the sons was longer maintained. But, in every country, the feudal states, once constituted, actively contributed to the breaking up of what remained of the feudal régime.

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